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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 625]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 625 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period August 7 through August 13, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 625 (§ 910.925) is effective for the period August 7 through August 13, 1988.

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

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

This regulation is consistent with the marketing policy for 1988–89. The committee met publicly on August 2, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is fairly good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

Note: This section will not appear in the Code of Federal Regulations.

§ 910.925 Lemon Regulation 625.

The quantity of lemons grown in California and Arizona which may be handled during the period August 7, 1988 through August 13, 1988, is established at 310,000 cartons.

Dated: August 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–17829 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 927

Expenses and Assessment Rate for Marketing Order Covering Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 927 for the 1988–89 fiscal year established for that order. The rule is needed for the Winter Pear Control Committee to incur operating expenses during the 1988–89 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988 through June 30, 1989 (§ 927.228).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927

(7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington, and California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 96 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Winter Pear Control Committee met on July 12, 1988, and revised the proposed 1988–89 fiscal year budget recommended by the Winter Pear Budget Committee. Revisions in the expenses were necessary because a smaller crop than originally estimated is anticipated. The control committee unanimously adopted 1988–89 fiscal year expenditures of $3,354,351, revised from the $3,593,110 previously recommended by the budget committee, and an assessment rate of $.30 per standard box, or equivalent, of pears shipped under M.O. 927. The assessment rate is the same as proposed on July 1, 1988. In comparison, 1987–88 fiscal year budgeted expenditures were $3,816,563 and the assessment rate was $.30 per standard box or equivalent. There was also a supplemental assessment in 1987–88 at the rate of $.16 per standard box, or equivalent, of comice pears for promotion.

Major expenditure items this year in comparison to 1987–88 budgeted expenditures (in parentheses) and those proposed only July 1, 1988, are $2,774,857 ($3,049,494), revised from $2,850,997 for paid advertising, $209,499 ($324,413), revised from $372,118, for contingencies to cover unanticipated expenses, and $145,000 ($141,235) for research designed to improve winter pear yields and quality. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts.

Assessment income for the 1988–89 fiscal year is expected to total $2,929,016, based on a revised estimate of shipments of 9,763,387 packed boxes of pears. Other available funds, such as $20,000 in prior year assessments, $15,000 in miscellaneous income, $75,000 in voluntary intrastate assessments, and a reserve of $315,335 carried into this fiscal year, will be utilized to cover the proposed 1988–89 fiscal year expenditures of $3,354,351. The reserve is within the limits authorized under the marketing order.

A proposed rule inviting comments on the Winter Pear Control Committee's 1988–89 expenses and assessment rate was published in the **Federal Register** on July 1, 1988 (53 FR 24954). The comment period ended July 15, 1988. The only comment received was from the control committee recommending the revisions in the proposed expenses.

While this proposed action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the budget of expenses and assessment rate are reasonable and will tend to effectuate the declared policy of the Act.

This budget of expenses and assessment rate should be expedited because the committee needs to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after the date of publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Winter pears, Oregon, Washington, and California.

For the reasons set forth in the preamble, § 927.228 is added as follows:

Note: this section will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Part 927 continues to read as follows:

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

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

2. New § 927.228, is added to read as follows:

§ 927.228 Expenses and assessment rate.

Expenses of $3,354,351 by the Winter Pear Control Committee are authorized, and an assessment rate of $.30 per standard box, or equivalent, of pears is established, for the fiscal year ending June 30, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

Dated: August 2, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-17743 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 929 and 967

Expenses and Assessment Rates for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 929 and 967 for the 1988–89 fiscal years established for the cranberry marketing order and celery marketing order. Both marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each order's administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing the anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: September 1, 1988, through August 31, 1989 (§ 929.229); August 1, 1988, through July 31, 1989 (§ 967.324).

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 929 (7 CFR Part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; and 967 (7 CFR Part 967) regulating the handling of celery grown in Florida. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. There are 7 handlers of celery grown in Florida, and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Cranberry Marketing Committee conducted a mail vote and unanimously recommended 1988–89 marketing order expenditures of $198,000 and an assessment rate of $0.055 per 100 pound barrel of cranberries shipped. In comparison, 1987–88 marketing year budgeted expenditures were $154,400 and the assessment rate was $0.043 per 100 pound barrel under M.O. 929. Assessment income for 1988–89 is estimated at $198,000 based on a crop of 3,600,000 barrels of cranberries. Other sources of income, including interest expected to be received, are estimated at $6,000, bringing total income to $204,000.

The Florida Celery Committee met on June 9, 1988, and unanimously recommended 1988–89 marketing order expenditures of $126,000 and an assessment rate of $0.02 per crate of celery shipped. In comparison, 1987–88 marketing year budgeted expenditures were $126,000 and the assessment rate was $0.02 per crate under M.O. 967. Assessment income for 1988–89 is estimated at $120,000 based on a crop of 6,000,000 crates of celery. Other sources of income, including interest expected to be received, are estimated at $6,000, bringing total income to $126,000.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new § 929.229 and § 967.324 and is based on committee

recommendations and other information. A proposed rule was published in the July 7, 1988, issue of the **Federal Register** (53 FR 25495). Comments on the proposed rule were invited from interested persons until July 18, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 929 and 967

Celery, Connecticut, Cranberries, Florida, Long Island in the State of New York, Marketing agreements and orders, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, new § 929.229 and § 967.324 are added as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 929 and 967 continues to read as follows:

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

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.229 is added to read as follows:

§ 929.229 Expenses and assessment rate.

Expenses of $198,000 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.055 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1989. Unexpended funds may be carried over as a reserve.

PART 967—CELERY GROWN IN FLORIDA

3. Section 967.324 is added to read as follows:

§ 967.324 Expenses and assessment rate.

Expenses of $126,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of assessable celery is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 2, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88–17664 Filed 8–4–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 993

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1988–89 fiscal year established under the marketing order for dried prunes produced in California. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses was prepared by the Prune Marketing Committee (committee) and submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 16 handlers of prunes grown in California, and approximately 1,200 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order requires that assessment rates for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing

anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on June 28, 1988, and unanimously recommended 1988–89 marketing order expenditures of $248,320 and an assessment rate of $1.60 per salable ton of prunes. In comparison, 1987–88 marketing year budgeted expenditures were $250,648 and the assessment rate was $1.52 per ton under M.O. 993. Assessment income for 1988–89 is estimated at $248,320 based on a crop of 155,200 salable tons of prunes.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 993.339 and is based on committee recommendations and other information. A proposed rule was published in the July 14, 1988, issue of the **Federal Register** (53 FR 26603). Comments on the proposed rule were invited from interested persons until July 25, 1988. No comments were received.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 993

California, Dried prunes, Marketing agreements and orders.

For the reasons set forth in the preamble, a new § 993.339 is added as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR Part 993 continues to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

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

2. Section 993.339 is added to read as follows:

§ 993.339 Expenses and assessment rate.

Expenses of $248,320 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.60 per ton for salable dried prunes for the 1988–89 crop year ending July 31, 1989.

Dated: August 2, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88–17663 Filed 8–4–88; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts as final an interim regulation which implements the provisions of section 412 of the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100–233. The final regulation provides for the establishment of a Special Committee on the Merger of Farm Credit Banks, the procedures for the selection of members to the Committee and the timeframes for obtaining required approvals and conducting stockholder votes on merger plans.

DATES: This regulation is effective August 5, 1988.

FOR FURTHER INFORMATION CONTACT.

James F. Thies, Assistant Chief Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On May 11, 1988, the FCA Board adopted an interim regulation (53 FR 16695) and requested public comments thereon, which implemented provisions of the 1987 Act relating to the creation of a Special Committee to develop a proposal for the merger or consolidation of the Farm Credit Banks. The interim regulation set forth certain requirements governing the organization of the Special Committee and timetables for the submission of its report to the FCA and to stockholders. The interim regulation clarified that the proposal of the Special Committee may include individual merger plans involving two or more Farm Credit Banks. The interim regulation also provided that the Special Committee proposal and each individual merger plan, together with disclosure material, must be submitted to the FCA not later than 90 days prior to the effective date of the merger, which, in any event, must not be later than July 5, 1989.

The FCA received comments only from the Special Committee. The Special Committee expressed the view that the regulation improperly and unnecessarily accelerates the times at which various steps must be accomplished. The Committee commented that although the 1987 Act requires that the consolidation proposals be developed not later than six months after the Special Committee's formation, the 1987 Act does not require that each proposed merger plan and accompanying disclosure materials be submitted to the FCA at that time. The Committee also stated that while the 1987 Act requires that stockholder votes be conducted by July 5, 1989, it does not require that the mergers be effective by that date. The Special Committee felt that the timeframes in the interim regulation, which require all documents to be submitted to the FCA by January 7, 1989 would not allow for comprehensive study and evaluation of potential mergers and financial viability of the resultant entities. The Special Committee recommended that the interim regulation be modified to provide for a two-step FCA approval process whereby the proposal for consolidation would be approved by January 7, 1989, and the individual consolidation plans and disclosure materials would be approved at a later time that would permit a vote of stockholders to occur by July 5, 1989. They futher requested that the interim regulation be modified to permit the effective date of the mergers to take place not later than January 1, 1990.

Upon careful consideration of the comments, the FCA Board has determined that the regulation will be amended to provide for stockholder votes to occur not later than July 5, 1989, and to permit the effective date of any merger to be delayed until not later than January 1, 1990. The Board agrees that in light of the potential complexity involved in analyzing the relevant issues, preparing the required documents, and providing sufficient time for implementation of statutorily mandated review requirements, it would be prudent to provide all parties involved with the maximum flexibility in scheduling as is possible. However, the FCA Board is concerned that while there are several benefits to a 6-month delay in the effective date of a merger, such a delay is not without risks. Accordingly, the final regulation has been amended to authorize the merger to be effective not later than January 1, 1990, but to require that if the proposed effective date is more than two months after the merger vote, the institutions involved must agree on the implementation of procedures and controls that will safeguard each institution's respective interests during the interim period.

The FCA has modified the timeframe for submission of the Special Committee proposal and each individual merger plan, together with disclosure material, to allow the Special Committee additional preparatory time. The final regulation requires the above submissions to be forwarded to the FCA not later than 120 days prior to the scheduled stockholder votes, which would, when considered in conjunction with the amended timeframe for the scheduled stockholder votes, be approximately two months later than required by the interim regulation.

The FCA Board does not agree that a two-stage approval process would materially enhance either the study and evaluation of potential mergers and their related financial viability, or the review and analysis of the subsequent proposal submitted. The FCA Board believes that sufficient time for a meaningful exchange of preliminary information between the Special Committee and the FCA will be afforded by the modified timeframes contained in the final regulation; and that a mutually substantive use of that time by the Special Committee and the FCA would obviate the need for any segmentation of the process for gaining the FCA's approval.

In accordance with 5 U.S.C. 553 (b) and (c), the FCA finds that additional public comments prior to the effective date of this regulation would be impracticable and contrary to the public interest. The FCA Board considered all of the public comments received in response to the advance notice of proposed rulemaking relating to the implementation of section 412 of the Act and in response to the interim regulation. In light of the statutory requirements relating to the completion of the Special Committee work, any delay in the effective date of the final regulation could prevent the Special Committee from completing its work in a timely fashion. For the same reasons, the FCA Board finds, in accordance with section 5.17(c)(2) of the Act, that an emergency exists which requires that these regulations be effective prior to the expiration of the 30-day congressional review period.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organizations and functions (Government agencies), Rural areas.

Accordingly, the interim rule amending 12 CFR Part 611 which was published at 53 FR 16695 on May 11, 1988 is adopted as a final rule with the following changes:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; Sec. 412 of Pub. L. 100–233.

2. Section 611.1140 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

§ 611.1140 Consolidation of Farm Credit Banks.

* * * * *

(d) The proposal of the Special Committee and each merger plan, together with the disclosure materials, shall be submitted to the Farm Credit Administration for approval not later than 120 days prior to the scheduled date for the stockholder votes for each merger involved. The stockholder votes shall be scheduled to occur not later than July 5, 1989, and the effective dates of the mergers shall not be later than January 1, 1990.

(e) If the proposed effective date of the merger is scheduled to occur more than 60 days after the stockholder vote, the boards of directors of the Farm Credit Banks involved shall enter into an agreement in connection with their approval of the merger agreement. The agreement shall contain adequate procedures and approval requirements that will govern the activities of the banks involved during the interim period between an affirmative stockholder vote and the effective date of the merger.

Dated: July 29, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–17690 Filed 8–4–88; 8:45 am]

BILLING CODE 6705–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure

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

ACTION: Final amendment.

SUMMARY: This amendment to NCUA's regulation concerning removal, prohibition and suspension simply conforms the regulations to the changes made to section 206(g) of the Federal Credit Union Act ("FCUA") by the Competitive Equality Banking Act of 1987 ("CEBA"). The amendment is therefore being made effective without prior notice and opportunity for public comment, and without a delayed effective date.

EFFECTIVE DATE: August 5, 1988.

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

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

SUPPLEMENTARY INFORMATION: CEBA amended section 206(g) of the FCUA as follows:

1. Extended NCUA's power to remove persons from office [12 U.S.C. 1786(g)(1)] to "employees";

2. Extended NCUA's power to prohibit persons from participating "in any manner in the conduct of the affairs" of an insured credit union [12 U.S.C. 1786(g)(2)] to "employees" and "agents";

3. Extended NCUA's power to suspend or prohibit a person temporarily prior to an administrative hearing [12 U.S.C. 1786(g)(4)] to employees and agents; and

4. Added a new section 206(g)(7) [12 U.S.C. (1786(g)(7)] prohibiting any person subject to an NCUA removal, prohibition, or suspension order:

From participation in the conduct of the affairs of any [insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation], any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act, and any savings and loan holding company or subsidiary of a savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration without the prior written approval of the appropriate Federal regulatory agency.

Congress amended Sections 206(g) (1) and (2) to clarify that the NCUA Board's removal, prohibition, and suspension power extends to all persons "in a position to do injury" to a federally-insured credit union. S. Rep. No. 19, 100th Cong., 1st Sess. 24–25, reprinted in [1987] U.S. Code Cong. & Ad. News 487, 514–15. Congress added Section 206(g)(7) to "eliminate the need for the OCC, FDIC, FSLIC, Federal Reserve or the Farm Credit Administration to take separate enforcement action * * *." *Id.*

Sections 747.501–747.503, and 747.505 of NCUA's Rules and Regulations have now been amended to reflect the clarification that the section 206(g) authority reaches an FCU's "employees" and "agents." A new provision [designated § 747.506; old § 747.506 becomes § 747.507] has been added to reflect the extended effect of an NCUA removal, prohibition, or suspension order to include prohibition on participation in the conduct of the affairs of other financial institutions.

Since this amendment simply conforms NCUA's regulations to changes Congress made to the FCUA, the Board has found that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary and not in the public interest. The Board has also found that the requirement for a 30-day delayed effective date under by 5 U.S.C. 553(d) is not applicable in this case; this amendment only restates provisions of the FCUA that federally-insured credit unions are now subject to.

Regulatory Procedures

Regulatory Flexibility Act

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

Paperwork Reduction Act

The final amendment does not contain information collection requirements.

Executive Order 12612

This amendments applies to Federal credit unions and federally-insured, state-chartered credit unions. Inclusion of federally-insured, state-chartered credit unions has been required by Congress under the FCUA changes made by CEBA.

List of Subjects in 12 CFR Part 747

Credit unions, Removal, Prohibition, Suspension.

By the National Credit Union Administration Board on July 27, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 747—[AMENDED]

1. The authority citation for Part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1789, and 12 U.S.C. 1795c, unless otherwise noted.

2. The title to Subpart E is revised to read as follows:

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension Actions

3. Section 747.501 is revised to read as follows:

§ 747.501 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to remove, prohibit from further participation, or suspend a person upon the grounds set forth in section 206(g) of the Federal Credit Union Act and enumerated in this subpart. The rules and procedures set forth in this subpart are not applicable to removal, prohibition, or suspension proceedings brought upon grounds set forth in section 206(i) of the Federal Credit Union Act and enumerated in Subpart F.

4. Section 747.502 is revised to read as follows:

§ 747.502 Grounds for removal or prohibition.

(a) The Board may remove any director, officer, committee member, or employee of an insured credit union upon its finding that such a party (1) has violated any applicable law, rule, regulation, or cease-and-desist order which has become final or (2) has engaged or participated in any unsafe or unsound practice in connection with the credit union, or (3) has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as director, officer, committee member, or employee and that the credit union has suffered, or will probably suffer, substantial financial loss or other damage, or that the interests of the credit union's insured members could be seriously prejudiced, by reason of the violation, practice, or breach of fiduciary duty.

(b) The Board may remove or prohibit from further participation in the conduct of the affairs of the credit union any director, officer, committee member, or employee of an insured credit union who the Board finds has, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue in his position.

(c) The Board may prohibit any agent or other person participating in the conduct of the affairs of an insured credit union from any further participation therein upon its finding that such a party has, by conduct or practice with respect to the insured credit union, another insured credit union, or another business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue his participation with the insured credit union.

(d) The Board may remove any director, officer, or committee member of an insured credit union upon its finding that such a party has committed any violation of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) or regulations issued thereunder, including Part 711 of this chapter.

5. Section 747.503 is revised to read as follows:

§ 747.503 Notice of intent to remove or prohibit; notice of hearing.

Whenever the Board determines that grounds for a removal or prohibition action exist, it will serve upon the concerned director, officer, committee member, employee, agent, or other person a notice of intent to remove and/or prohibit and a notice of hearing. This notice will contain a statement of the facts constituting the grounds therefor and will fix a time and place at which a hearing will be held thereon. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by the Board at the request of the party concerned, for good cause shown, or at the request of the Attorney General of the United States. Any responding

party not appearing at the hearing in person or by a duly authorized representative, shall be deemed to have consented to the issuance of an order of removal and/or prohibition.

6. Section 747.505 is revised to read as follows:

§ 747.505 Suspension and immediate prohibition.

(a) *Grounds for suspension or immediate prohibition; Notice.* In respect to any director, officer, committee member, or employee of an insured credit union, or any agent or other person referred to in § 747.502 (a), (b) or (c), the Board may, if it deems it necessary for the protection of the credit union or the interest of its insured members, by written notice to that effect served upon such a party, suspend that person from office and/or prohibit that party from further participation in any manner in the conduct of the affairs of the credit union.

(b) *Effective date of suspension or immediate prohibition.* The suspension and/or prohibition will be effective upon service of the notice thereof and, unless stayed by a court in proceedings authorized by section 206(g)(6) of the Federal Credit Union Act and described in paragraph (c) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under § 747.503 of this subpart and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director, officer, committee member, employee, agent, or other person, until the effective date of any such order. Copies of any such order shall also be served upon the credit union of which the respondent party is a director, officer, committee member, employee, or agent, or in the conduct of whose affairs the person has participated.

(c) *Stay of suspension or immediate prohibition.* Within 10 days after any director, officer, committee member, employee or agent, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under section 206(g)(4) of the Federal Credit Union Act and as set forth in this subpart, the concerned party may apply to the U.S. District Court for the judicial district in which the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings, and such court shall have jurisdiction to stay such suspension and/or prohibition.

§ 747.506 [Redesignated as § 747.507]

7. Section 747.506 is redesignated as § 747.507.

8. A new § 747.506 is added and reads as follows:

§ 747.506 Effect of removal, prohibition, or suspension.

(a) Any director, officer, committee member, employee, agent, or any other person who, pursuant to section 206(g) of the Federal Credit Union Act, is removed, suspended, or prohibited from participation in the conduct of the affairs of an insured credit union shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of any insured institution, any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act, and any savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration, without the prior written approval of the appropriate Federal regulatory agency.

(b) As used in this subpart, the term "insured institution" means an insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

[FR Doc. 88-17693 Filed 8-4-88; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-27; Amdt. 39-5982]

Airworthiness Directives; Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to the Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B gliders which requires inspection and replacement of the elevator drive bracket with a modified elevator drive bracket. This action was prompted by the determination that the elevator drive bracket may develop cracks adjacent to the weld area. This condition, if not corrected, could result in failure of the elevator drive bracket and loss of pitch control.

DATES:

Effective—August 19, 1988.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 19, 1988.

ADDRESSES: The technical information and replacement parts specified in this AD may be obtained from Messrs. Schempp-Hirth, Flugzeugbau GmbH, Krebenstr 25, PostFach 14 43, D-7312 Kircheim/Teck, Federal Republic of Germany. A copy of the technical note is contained in the Rules Docket, Docket Number 88-ANE-27, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710; or Mr. John J. Maher, New York Aircraft Certification Office, ANE-172, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: Schempp-Hirth GmbH has determined that cracks may develop in the elevator drive bracket. The manufacturer has issued Technical Note (TN) No. 286-24, dated August 14, 1987, TN No. 295-19, dated August 14, 1987, and TN No. 328-8, dated August 14, 1987, compliance with which is required by Luftfahrt Bundesamt (LBA) AD 87-126/2 Schempp-Hirth, dated June 16, 1987. These documents require a visual check, prior to each flight, for cracks in the elevator drive bracket, and replacement with a modified elevator drive bracket, within 5½ months from the issue date of the LBA AD, unless previously replaced.

The FAA's evaluation of the service history of this part indicates that an initial visual inspection for cracks, using a 5 power magnifying glass or greater, within 10 hours flight time from the effective date of this AD with a repetitive inspection within 50 hours from the last inspection, would be more appropriate. Cracked parts must be

replaced before further flight. As there are gliders that may be flown infrequently and the exact cause of the failure is unknown, a calendar date by which the modified part must be installed is incorporated in the FAA AD. The FAA relies upon certification of the LBA, combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Schempp-Hirth GmbH TN No. 286–24, TN No. 295–19, and TN No. 328–8, and the issuance of Schempp-Hirth AD 87–126/2 by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Schempp-Hirth GmbH TN No. 286–24, TN No. 295–19, and TN No. 328–8 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, this AD is being issued to require inspection and replacement of the elevator drive bracket on Schempp-Hirth GmbH Model Nimbus-2B, Janus B, and Mini-Nimbus B gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Schempp-Hirth GmbH: Applies to Models Nimbus-2B, Janus B, and MiniNimbus B gliders certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the elevator drive bracket and loss of pitch control accomplish the following:

(a) Within the next 10 hours time in service (TIS) after the effective date of this AD unless already accomplished, and thereafter at intervals not to exceed 50 hours TIS from the last inspection, visually inspect the elevator drive bracket, P/N 30.055, using a 5-power or greater magnifying glass for cracks in the area adjacent to the welds on both sides of the bracket as shown in Sketch 1 or Sketch 3 of Schempp-Hirth Flugzeugbau GmbH Technical Note (TN) No. 286–24, dated August 14, 1987, for Nimbus-2B gliders, TN No. 295–19, dated August 14, 1987, for Janus B gliders, and TN No. 328–8, dated August 14, 1987, for Mini-Nimbus B gliders.

(b) If cracks are found in the elevator drive bracket, replace the elevator drive bracket with elevator drive bracket, Part Number (P/N) 30.055, modification "a", dated August 24, 1987, before further flight.

(c) Prior to November 30, 1988, unless already accomplished, replace elevator drive bracket P/N 30.055 with elevator drive bracket P/N 30.055, modification "a", dated August 24, 1987.

Note.—Installation of P/N 30.055, modification "a" is shown in Schempp-Hirth drawing HS5–30.055/1 Elevator-to-Stabilizer Assembly.

(d) Upon request an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium telephone 513.38.30, Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581 telephone (516) 791–6680.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office may adjust the compliance times specified in this AD.

Schempp-Hirth GmbH TN No. 286–24 with 4 attached sketches, TN No. 295–19 with 4 attached sketches, and TN No. 328–8 with 4 attached sketches and 1 attached drawing, all dated August 14, 1987, identifed and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Messrs. Schempp-Hirth, Flugzeugbau GmbH, Krebenstr 25, PostFach 14 43, D–7312 Kircheim/Teck, Federal Republic of Germany.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachussetts 01803, Room 311, Rules Docket 88–ANE–27, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 19, 1988.

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

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–17628 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ASW–26; Amdt. 39–5975]

Airworthiness Directives, Schweizer Aircraft Corporation Model 269 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial inspection followed by repetitive inspections and repair or replacement, as necessary, of the fuselage aft cluster fittings on Schweizer Model 269 series helicopters. The AD is prompted by reports of misidentified aft cluster fittings, cracked cluster fittings, and improperly processed cluster fittings which could result in separation of the tailboom support strut from the

helicopter center frame and consequent loss of control of the helicopter.

EFFECTIVE DATE: August 19, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1988.

Compliance: As indicated in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Schweizer Aircraft Corp., P.O. Box 147, Elmira-Corning Regional Airport, Elmira, New York 14902.

A copy of the service information is contained in the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Bldg. 3B, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Maher, ANE–172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone number (516) 791–6221.

SUPPLEMENTARY INFORMATION: There have been recent reports of cracks on the upper strut lug and on the forward tube of Part Numbers (P/N) 269A2234–3 and 269A2235–3 aft cluster fittings. The manufacturer has investigated the reports and determined that the cracks did not all result from the same cause. Two of the lug cracks were attributed to surface defects (i.e., tool marks) and to use of the tailboom support for a step. The tube cracks and one lug crack were attributed to improper heat treating processes resulting in a high carbon content and consequent embrittlement. The manufacturer has further determined that the heat treating problem occurred on aircraft being manufactured at Schweizer from parts delivered to Schweizer from May 1, 1986, through October 22, 1987. Although this limits the extent of the problem, it still must be determined which serial number helicopters have the redesigned –3 fitting installed since Schweizer spare parts with incorrect heat treating could have been installed as replacement parts on previously manufactured helicopters. Also, some –3 fittings were cast but only identified with the basic P/N's 269A2234 and 269A2235 with no dash number. This could result in the redesigned part being unknowingly installed as an original fitting. To preclude this, the FAA has determined that each helicopter must have the aft cluster fittings dimensionally checked to establish whether an original or a redesigned –3 fitting is installed. Once it is determined where the –3 fittings are installed, the calendar period the part was installed must be determined so that only the appropriate Schweizer-supplied and installed fittings will be further inspected.

Proper heat treatment of the subject fittings may be verified by chemical analysis of a sample piece returned to Schweizer Aircraft Corporation. The manufacturer has further determined that certain surface defects could occur only on certain serial number helicopters manufactured at Schweizer. The manufacturer issued Schweizer Service Information Notice (SIN) Nos. 217, 220, and 221 which pertain to this same subject.

Since these conditions are likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspections of the aft cluster fitting dimensionally, visually, and chemically so that defective parts can be removed and replaced with serviceable parts on Schweizer Model 269 series helicopters. The AD requires: (1) A dimensional inspection of all Model 269 helicopter aft cluster fittings to determine which serial numbers have the original aft cluster fittings, P/N's 269A2234 and 269A2235, or the redesigned fittings, P/N's 269A2234–3 and 269A2235–3; (2) chemical inspection of fittings determined to be later –3 configurations and also determined to have been purchased between May 1, 1986, and October 22, 1987; (3) daily visual and 100-hour repetitive dye penetrant inspections of fittings determined to be out-of-tolerance chemically until replacement or until December 31, 1988, whichever comes first; (4) visual inspection of certain –3 fittings for cracks or surface defects, and removal and repair or replacement of fittings found to have defects; and (5) the installation of a "No-Step" placard on the tailboom support strut. Failure of the aft cluster fitting could result in separation of the tailboom support strut from the helicopter center frame and consequent loss of control of the helicopter.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Schweizer Aircraft Corporation (McDonnell Douglas Helicopter Company, Hughes Helicopters, Inc). Applies to helicopter Models 269A, TH–55A (all S/N's operated in civil use), 269A–1, 269B, and 269C, certificated in any category. (Docket No. 88–ASW–26)

Compliance is required as indicated, unless already accomplished.

To prevent possible loss of the tail boom support strut and tail boom which could result in loss of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, on Model 269C helicopters with S/N's 1166 through 1289, inspect aft cluster fittings (P/N's 269A2234–3 and 269A2235–3) for cracks and surface defects in accordance with the procedures section of Schweizer Service

Information Notice (SIN) No. N–220, dated January 29, 1988.

Note.—SIN No. 220 provides repair procedures and limits for surface defects.

(b) Within the next 25 hours' time in service after the effective date of this AD conduct the following inspections:

(1) On Models 269A, A–1, B, and TH–55A (all serial numbers) and Model 269C (for all S/N's prior to 1262) conduct a dimensional inspection of the aft cluster fittings (P/N's 269A2234, 269A2235, 269A2234–3, and 269A2235–3) in accordance with Part 1 of Schweizer SIN No. N–217, dated January 29, 1988.

(2) On Model 269C helicopters (S/N's 1262 through 1289) and all other helicopters identified in paragraph (b)(1) as having aft cluster fittings, P/N's 269A2234–3 and 269A2235–3, with fittings purchased from Schweizer Aircraft Corporation between May 1, 1986 and October 22, 1987—

(i) Inspect the fittings for cracks using visual and dye penetrant methods in accordance with Parts II and IV of Schweizer SIN No. N–221, dated January 29, 1988; and

(ii) Remove a sample piece from uncracked fittings and return to Schweizer Aircraft Corporation for laboratory analysis in accordance with Part III of Schweizer SIN No. 221, dated January 29, 1988.

(c) Repeat the inspections of paragraph (b)(2)(i) at the following intervals until the P/N 269A2234–3 and P/N 269A2235–3 fittings are determined to meet the Schweizer process specification or until the aft cluster fittings are replaced with parts which do meet the specifications:

(1) Conduct visual inspections in accordance with Part IV of Schweizer SIN No. N–221, dated January 29, 1988, prior to the first flight of each day.

(2) Conduct dye penetrant inspections in accordance with Part II of Schweizer SIN No. N–221 dated January 29, 1988, at intervals not to exceed 100 hours' time in service from the previous inspections.

(d) Replace fittings found to be cracked or to have surface defects with serviceable fittings before further flight.

(e) No later than December 31, 1988, replace P/N 269A2234–3 and 269A2235–3 fittings not found to meet the Schweizer process specification.

(f) Within the next 25 hours' time in service after the effective date of this AD, on all Model 269A, TH–55A (all S/N's operated in civil use), 269A–1 and 269B (all S/N's) and Model 269C (S/N's 0004 through 1289) install a "NO STEP" placard in accordance with Part II of Schweizer SIN No. N–217 dated January 29, 1988.

(g) Alternative means of compliance which provide an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

(h) Aircraft may be ferried in accordance with the provisions of §§ 21.197 and 21.199 to a base where the AD can be accomplished.

The procedure shall be done in accordance with Schweizer SIN Nos. N–217, N–220, N–221, each dated January 29, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira-Corning Regional Airport, Elmira, New York 14902. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective on August 19, 1988.

Issued in Fort Worth, Texas, on June 24, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88–17629 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ANE–29; Amdt. 39–5973]

Airworthiness Directives; Schweizer Aircraft Corporation Glider Models SGS and SGU Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of Schweizer Glider Models SGS and SGU Series by individual priority letters. Because typographical errors occurred in the part numbers (P/N) in priority letter AD 87–17–01, they are corrected. The AD requires inspection, and replacement if necessary, of the tow-release arm in the tow-release system prior to the next flight, unless already accomplished. The AD is needed to prevent jamming of the tow-release mechanism which could result in failure of the tow-line to release from the glider and result in an unsafe condition during landing.

DATES: Effective August 19, 1988 to all persons except those to whom it was made immediately effective by individual priority letter AD 87–17–01, issued August 18, 1987, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 19, 1988.

ADDRESSES: Schweizer Aircraft Corporation Service Bulletin (SB) No. SA–005.1, dated January 31, 1988, SB No. SA–001.3, dated January 31, 1988, and replacement parts specified in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902; telephone (607) 739–3821.

Copies of SB No. SA–005.1 and SB No. SA–001.3 are contained in the Rules Docket, Docket No. 87–ANE–29, Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: C. Kallis, ANE–173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Division, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6428.

SUPPLEMENTARY INFORMATION: On August 18, 1987, priority letter AD 87–17–01, was issued and made effective immediately to all known U.S. owners/operators of certain Schweizer Aircraft Corporation Glider Models SGS and SGU Series. AD action resulted from two reports that reflects that certain Schweizer tow-hooks with release arms P/N's 1D217–13, 1D222–15, 1D222–17 or 34017D–15 used on the above Schweizer Aircraft Corporation gliders, can create a jamming condition of the tow-line ring during towing, when an input by the glider pilot commands release of the tow-line. Schweizer Aircraft Corporation has issued SB No. SA–005.1, dated January 31, 1988, which calls for inspection of the tow-release installations, and replacement if necessary with new parts. Failure to release the tow-line while towing one of these gliders may result in an unsafe condition during landing.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter AD issued, August 18, 1987, to all known U.S. owners and operators of certain Schweizer gliders. These conditions still exist, and the AD with typographical corrections to the P/N's, is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to

preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. By adding to § 39.13 the following new airworthiness directive (AD):

Schweizer Aircraft Corp: Applies to models (including kit built) SGU 1-7; SGS 2-8 (TG-2); SGS 2-12 (TG-3); SGU 1-19; SGU 1-20; SGU 1-21; SGU 2-22, 2-22A, 2-22C, 2-22CK, 2-22E, 2-22EK; SGS 1-23, 1-23B, 1-23C, 1-23D, 1-23E, 1-23F, 1-23G, 1-23H, 1-23H15; SGS 1-24; SGS 1-26, 1-26A, 1-26B, 1-26C, 1-26D, 1-26E; SGS 2-32; SGS 2-33, 2-33A, 2-33AK; SGS 1-34, 1-34R; SGS 1-35C; SGS 1-36 (SPRITE) gliders, certificated in any category.

Compliance is required prior to the next flight after the effective date of this AD, unless already accomplished.

To prevent the possibility of the tow release assembly creating a jammed condition during towing and subsequent failure of the tow line to release, which could result in a forced landing, accomplish the following:

(a) Inspect the tow release installation to determine if any of the following release arms are installed:

P/N 1D217-13, 1D222-15, 1D222-17 or 34017D-15.

Note.—The above arms can be identified by a lug which is welded on the front face of the release arm as shown in Figure 1 of Schweizer Service Bulletin (SB) No. SA-005.1, dated January 31, 1988.

(b) Tow release installations which have any of the release arms listed in (a) must have the arms replaced in the following manner:

P/N 1D217-13 replace with 1D217-09
P/N 1D222-15 replace with 1D222-11
P/N 1D222-17 replace with 1D222-13
P/N 34017D-15 replace with 34017D-11

(c) Perform the operational check in accordance with Figure 4 in Schweizer SB No. SA-001.3, dated January 31, 1988, following release arm replacement.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration (FAA), New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Schweizer Aircraft Corporation SB Nos. SA-005.1 and SA-001.3, both dated January 31, 1988, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902; telephone (607) 739-3821. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 87-ANE-29, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 19, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 87-17-01, issued August 18, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on June 23, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-17630 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ASO-12]

Revocation of Restricted Area R-3701B, Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R-3701B Fort Campbell, KY. An FAA review of the utilization reports for R-3701B indicated that this area has not been activated for a prolonged period and, therefore, no longer needs the restricted designation. This action would return the airspace to general aviation use.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations revokes Restricted Area R-3701B For Campbell, KY. An FAA review of the utilization of R-3701B showed a history of inactivity for that area. The review findings indicate a lack of a valid requirement that would justify retention of this airspace. The Department of the Army concurs with this action. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.37 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.60 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, therefor—(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 73

Aviation safety, Restricted areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.37 [Amended]

2. Section 73.37 is amended as follows:

R–3701B Fort Campbell, KY [Removed]

Issued in Washington, DC, on July 28, 1988.

O. E. Falsetti,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–17631 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 12

[Docket No. 87N–0364]

Formal Evidentiary Public Hearing; Time Periods for Filing Exceptions to Initial Decisions and Replies to Exceptions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing formal evidentiary public hearings to provide for a period of 60 days in which a party may file exceptions to an initial decision of the administrative law judge and to provide for a period of 60 days for filing replies to exceptions. FDA also revising these regulations to provide that the Commissioner of Food and Drugs (the Commissioner) will grant extensions of these 60-day periods only in extraordinary circumstances.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Tenny P. Neprud, Jr., Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1988 (53 FR 2767), FDA issued a proposed rule to amend 21 CFR 12.125 of the agency's regulations governing formal evidentiary public hearings to provide a period of 60 days in which parties may file exceptions to the administrative law judge's initial decision and a period of 60 days in which parties may file replies to exceptions. FDA also proposed to provide that the Commissioner would grant extensions of the time for filing such exceptions or replies to exceptions only in extraordinary circumstances.

FDA provided a period of 60 days for interested persons to submit comments on the proposed rule. No comments were received. Accordingly, for the reasons given in the preamble to the proposed rule, FDA is adopting the rule with only minor clarifying changes.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has analyzed the economic impact of this rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency has determined that the rule is not a major rule as defined in Executive Order 12291 and certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 12

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Comestic Act and under authority delegated to the Commissioner of Food and Drugs, Part 12 is amended as follows:

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

1. The authority citation for 12 CFR Part 12 is revised to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec.1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.SC. 821 *et seq.*); sec 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 14(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*).

2. Section 12.125 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 12.125 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the Dockets Management Branch, and serving them on the other participants, within 60 days of the date of the initial decision.

* * * * *

(c) Any reply to the exceptions is to be filed and served within 60 days of the end of the period for filing exceptions.

(d) The Commissioner may extend the time for filing exceptions under paragraph (a) of this section or replies to exceptions under paragraph (c) of this section only upon a showing by a participant of extraordinary circumstances. Such an extension shall be requested by filing a written request with the Commissioner's Executive Secretariat (HF–40) and serving copies of the request on the Dockets Management Branch (HFA–305), the Chief Counsel (GCF–1), and all hearing participants.

* * * * *

Dated: July 15, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–17708 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 175

[Docket No. 87F–0384]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis[benzoate-*O*][2-propanolato]aluminum as a component of adhesives used in the manufacture of containers intended to contact food. This action responds to a petition filed by Kuraray Co., Ltd.

DATES: Effective August 5, 1988; objections and requests for a hearing by September 6, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 11, 1988 (53 FR 643), FDA announced data petition (FAP 7B4035) had been filed by Kuraray Co., Ltd., 12–39 Umeda, 1-Chome, Kita-Ku, Osaka, 530, Japan, proposing that the food additive regulations be amended to provide for the safe use of bis(benzoate-*O*)(2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended for food contact.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that 21 CFR 175.105 should be amended by alphabetically adding "bis(benzoate-*O*)(2-propanolato)aluminum (CAS Reg. No. 105442–85–1)" as a new entry in the table in paragraph (c)(5).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 6, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularitly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry in the table to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Bis(benzoate-*O*)(2-propanolato)aluminum (CAS Reg. No. 105442–85–1)	For use only as a reactant in the preparation of polyester resins.
* * * * *	

Dated: July 26, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–17640 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 386

[DoD Directive 5133.1]

Assistant Secretary of Defense (International Security Policy)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part adds 32 CFR Part 386 to identify the Assistant Secretary of Defense (International Security Policy) and delineates its responsibilities, functions, relationships, and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 386

Organization and function.

Accordingly, Title 32, Chapter 1, is amended to add Part 386 as follows:

PART 386—ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY POLICY)

Sec.

386.1 Purpose.
386.2 Definition.
386.3 Responsibilities and functions.
386.4 Relationships.
386.5 Authorities.
386.6 Effective date.

Authority: 10 U.S.C. 136.

§ 386.1 Purpose.

This part:

(a) Establishes, pursuant to 10 U.S.C. 136, the position of Assistant Secretary of Defense (International Security Policy) (ASD(ISP)) under the direction, authority, and control of the Under Secretary of Defense for Policy (USD(P)).

(b) Assigns responsibilities, functions, relationships, and authorities, as

prescribed herein Do the ASD(ISP) in accordance with DoD Directive 5111.1.[1]

§ 386.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

§ 386.3 Responsibilities and functions.

The Assistant Secretary of Defense (International Security Policy) is the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense for defense policy and planning related to nuclear weapons policy and strategy, technology transfer, East-West trade, arms negotiations and nuclear nonproliferation. The ASD(ISP) is also the principal staff advisor on other political-military and international economic matters involving the North Atlantic Treaty Organization (NATO), Europe, and the Soviet Bloc. In the exercise of these responsibilities, the ASD(ISP) shall:

(a) Formulate policy related to strategic offensive and defensive forces including strategic reserve forces and theater nuclear forces.

(b) Formulate policy related to NATO, Europe, and the Soviet Bloc.

(c) Develop and oversee DoD policy for technology transfer matters including, but not limited to, U.S. and Coordinating Committee (COCOM) export licenses, strategic trade, munitions licenses, technology transfer aspects of security assistance programs, U.S. and international technology controls, arms cooperation programs, and international personnel and technical data exchanges.

(d) Develop DoD policy positions and recommendations regarding nuclear nonproliferation policy and arms control and disarmament negotiations, both nuclear and conventional, as well as other multilateral security negotiations.

(e) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned geographic areas of responsibility.

(f) Promote coordination, cooperation, and joint planning on armaments development with NATO allies.

(g) Formulate policy related to strategic offensive and defensive forces, including strategic reserve forces, theater nuclear forces, nuclear forces and their employment, and pertinent budget considerations, and provide oversight and implementation of that policy.

(h) Develop DoD positions and recommendations, and coordinate all policy matters concerning security assistance, Military Assistance Advisory Groups and other missions pertaining to security assistance for NATO, NATO members, and other European countries.

(i) Develop, negotiate, and monitor defense cooperation agreements with foreign governments in assigned geographic areas of responsibility.

(j) Provide international economic, trade, and security policy guidance and recommendations on East-West and West-West relations and the NATO Alliance, other European countries, and the Soviet Bloc, including trade, export, economic security, energy, arms transfer and collaboration, alliance readiness issues, and foreign investments in the United States.

(k) Cooperate with the Under Secretary of Defense (Research and Engineering) and the Assistant Secretary of Defense (Acquisition and Logistics) to develop industrial cooperation and coproduction arrangements with foreign countries under ASD(ISP) cognizance.

(l) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(m) Represent the Office of the USD(P) in National Disclosure Policy Committee (NDPC) actions.

(n) Represent DoD on the Committee on Foreign Investment in the U.S. (CFIUS).

(o) Serve as DoD focal point for Foreign Military Rights Affairs, negotiations on military facilities, operating rights, status of forces and international political-military matters, and monitor agreements with foreign countries under ASD(ISP) cognizance.

(p) Perform such other duties as the Secretary of Defense and the USD(P) may prescribe.

§ 386.4 Relationships.

(a) In the performance of duties, the ASD(ISP) shall:

(1) Coordinate and exchange information with other DoD and Federal organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components shall coordinate all matters concerning the responsibilities and functions cited in § 386.3 with the ASD(ISP).

§ 386.5 Authorities.

The ASD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with the DoD 5025.1-M, which carry out policies approved by the Secretary of Defense, in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Participate in interdepartmental activities as required to carry out functions.

(c) Obtain such reports, information, advice, and assistance, consistent with policies and criteria of DoD Directive 5000.19,[2] as necessary.

(d) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated with the JCS; all JCS security assistance communicates regarding NATO and Europe shall be coordinated with the ASD(ISP).

(e) Establish arrangements for DoD participation in those non-DoD governmental programs for which primary cognizance is assigned.

(f) Communicate with other government agencies, representatives of the Legislative Branch, and the public, as appropriate, in carrying out assigned functions.

§ 386.6 Effective date.

This part is effective September 27, 1985.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

August 2, 1988.

[FR Doc. 88-17725 Filed 8-4-88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 386.1(b).

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32 CFR Part 389

[DoD Directive 5105.39]

Director of Net Assessment

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part adds 32 CFR Part 389 to Identify the Director of Net Assessment and delineates its responsibilities, functions, relationships,

and authorities pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 131.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301–1950, telephone (202) 697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 389

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 389 as follows:

PART 389—DIRECTOR OF NET ASSESSMENT

Sec.
389.1 Purpose.
389.2 Definition.
389.3 Responsibilities.
389.4 Functions.
389.5 Authorities.
389.6 Relationships.
389.7 Effective date.

Authority: 10 U.S.C. 131.

§ 389.1 Purpose.

This part:

(a) Establishes, pursuant to 10 U.S.C. 131, the position of Director of Net Assessment under the direction, authority, and control of the Under Secretary of Defense for Policy (USD(P)) in accordance with DoD Directive 5111.1.[1]

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the Director of Net Assessment.

§ 389.2 Definition.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and specified Commands, the Inspector General of the Department of Defense, and the Defense Agencies.

§ 389.3 Responsibilities.

The *Director of Net Assessment* shall be the Principal Staff Assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on net assessment matters.

§ 389.4 Functions.

Under the general direction of the USD(P), pursuant to DoD Directive 5111.1, and the Secretary of Defense, the Director of Net Assessment shall perform the following functions:

(a) Develop net assessments of current and projected U.S. and foreign military capabilities by theater, region, function, or mission. In accomplishing these net assessments, the Director may call upon all available intelligence data and all available friendly force data.

(b) Accomplish or provide for the development of specific net assessments of current and projected U.S. and foreign capabilities, operational tactics, doctrine and major weapons categories or systems.

(c) Develop, advise, and consult on the net assessment portion of the Secretary's Annual Defense Report, congressional testimony, and foreign government discussions, and provide guidance for the preparation of the Chairman, Joint Chiefs of Staff (CJCS) Posture Statement.

(d) Provide guidance or staff assistance and representation for the Secretary of Defense in the development of national act assessments by the National Security Council and act as primary focal point for joint efforts with the intelligence community to produce net assessments.

(e) Coordinate and review net assessment efforts throughout the Department of Defense.

(f) Provide support for the improvement and development of net assessments within the Department of Defense, including, but not limited to, the maintenance of a library of historical all-source intelligence and friendly force data.

(g) Provide objective analysis of policy, doctrine, strategy, goals, and objectives, as requested or determined necessary.

§ 389.5 Authorities.

In the discharge of responsibilities and performance of functions as prescribed herein, the Director of Net Assessment is hereby delegated the following authorities on behalf of the USD(P) and the Secretary of Defense:

(a) Task directly the organizational elements within the DoD Components, and the intelligence community to provide assistance, information consistent with DoD Directive 5000.19,[2] data processing, and other support for the development of net assessment and other related functions, such as strategic planning and strategic force plans, as necessary.

(b) Obtain external assistance, as appropriate, from the Defense Agencies, intelligence community, and other organizations of the executive and legislative branches of the government.

(c) Direct the work of assigned staff, and convene and direct the performance of working groups, task forces, and other provisional bodies, as appropriate, in the development of net assessments or execution of other assigned functions.

(d) Communicate with other government agencies as necessary to perform assigned functions.

§ 389.6 Relationships.

The Director of Net Assessment shall report through the USD(P) to the Secretary of Defense.

§ 389.7 Effective Date.

This part is effective September 27, 1985.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 2, 1988.

[FR Doc. 88–17726 Filed 8–4–88; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 387.1(a).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–27]

Special Local Regulations; Cleveland National Air Show, Cleveland, OH; Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Cleveland National Air Show which is to be conducted over the eastern portion of Cleveland Harbor from 1 September through 5 September 1988. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 1 September and terminate on 5 September 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) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making 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 5 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.

This has been an annual event for many years and no negative comments concerning it have been received.

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 Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor from the 1st of September through the 5th of September 1988. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

Economic Assessment and Certification

These regulations are considered to be non-major 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.

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 § 100.35–0927 to read as follows:

§ 100.35–0927 Cleveland National Air Show, Cleveland, OH—Lake Erie.

The following area will be closed to vessel navigation or anchorage from 2:30 p.m. (local time) until 5:30 p.m. on 1 and 2 September; 8:30 a.m. until 5:30 p.m. on 3, 4 and 5 September 1988.

(a) *Restricted Area.* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northeast corner of Dock No. 24 northwest to a point on the east breakwall at 41 degrees 30 minutes 36.0 seconds North, 81 degrees 42 minutes 34.2 seconds West; thence, northeastward along the breakwall to 41 degrees 30 minutes 51.7 seconds North, 81 degrees 42 minutes 07.6 seconds West; then, northwestward to 41 degrees 31 minutes 08.1 seconds North, 81 degrees 42 minutes 22.2 seconds West; thence, eastward to 41 degrees 32 minutes 18.1 seconds North, 81 degrees 40 minutes 17.0 seconds West; then, southeastward to a point on the east breakwall at 41 degrees 32 minutes 02.5 seconds North, 81 degrees 40 minutes 03.4 seconds West; continuing east along the breakwall to 41 degrees 32 minutes 13.2 North, 81 degrees 39 minutes 44.0 seconds West; then, southeast to a point on the shoreline at position 41 degrees 31 minutes 49.8 seconds North, 81 degrees 39 minutes 20.5 seconds West; thence, shoreline to the northeast corner of Dock No. 24.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the 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 and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(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 signalled 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.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Date:* This section is effective from 2:30 p.m. (local time) on 1 September 1988 until 5:30 p.m. (local time) on 5 September 1988.

Dated: July 25, 1988.

R.A. Appelbaum,

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

[FR Doc. 88–17625 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–88–28

Special Local Regulations: Labor Day Fireworks Display, Maumee River, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Labor Day Fireworks Display. This event will be held on the Maumee River on 5 September 1988 with an alternate date of 9 September 1988. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 5 September 1988 and terminate on 9 September 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) 522–3982.

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 9 June, 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.

This has been an annual event for many years and no negative comments concerning it have been received.

Economic Assessment and Certification

These regulations are considered to be non-major 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 Labor Day Fireworks Display will be conducted on the Maumee River on 5 September 1988. The alternate date for the event will be 9 September 1988. This event will have falling debris and ash and an unusually large concentration of spectator boats 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, Toledo, 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 § 100.35–0928 to read as follows:

§ 100.35–0928 Labor Day Fireworks Display, Maumee River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:30 p.m. (local time) until 10:00 p.m. on 5 September 1988: That portion of the Maumee River from the Cherry Street Bridge to the Anthony Wayne Bridge.

(2) The following portion of the Maumee River will be closed to all vessel traffic, from 8:30 p.m. (local time) until 10:00 p.m. on 5 September 1988: That portion of the Maumee River within a 500 foot radius of the fireworks barges.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 9:45 p.m. local or when the fireworks display ends, whichever comes first.

(2) Two 60 foot fireworks barges will be moored at the City of Toledo Division of Streets, Harbor and Bridges Building Dock. Vessel masters shall pass with caution.

(3) If the weather on 5 September 1988 is inclement, the fireworks display and the river closure will be postponed until 8:30 p.m. to 10:00 p.m. on 9 September 1988. If postponed, notice will be given on 5 September 1988 over the U.S. Coast Guard Radio Net.

(4) 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.

(5) A succession on 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 Date.* This section is effective from 8:30 p.m. (e.d.t.) on 5 September 1988 until 10:00 p.m. on 9 September 1988.

Dated: July 25, 1988.

R.A. Appelbaum,

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

[FR Doc. 88–17626 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Cleveland Regulation 88–05]

Safety Zone Regulations; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is re-establishing ten safety zones in the Old River and the Cuyahoga River and their adjoining shore areas. They are identical to previously-established zones with the exception that cargo vessels may temporarily moor in the zones while conducting loading/unloading operations until those operations are complete. The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1,600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitiate safe navigation. And, cargo vessels conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

DATES: This regulation become effective on August 1, 1988. It terminates on December 1, 1988 unless sooner terminated by the Captain of the Port, Cleveland. Comments on this regulation must be received on or before December 1, 1988.

ADDRESS: Comments should be mailed to Commanding Officer, Marine Safety Office, 1055 East Ninth Street, Cleveland, OH 44114. The comments will be available for inspection and copying at the same location. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, (216) 522–4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Although this regulation is published as an emergency final rule without prior notice, 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 given reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information: The drafters of this regulation are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation: The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of four times a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road Bridge, Alpha Precast Products (United Ready Mix), Upriver Marina and Shippers C&D. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

Seven safety zones were established on September 3, 1987. Those zones were located at specific bends in the Cuyahoga River at which a history of mishaps had developed, and were successful in preventing further mishaps at those designated areas. During the period in which the emergency rules were in effect, the Captain of the Port continued to study the river traffic situation, and determined that three other areas presented a severe hazard to life and property should small craft be allowed to moor there. These areas were incorporated into a proposed regulation which would make all ten areas permanent safety zones, which was published in the Federal Register on December 3, 1987.

The comments concerning these proposed regulations resulted in the Captain of the Port holding a public hearing on March 7, 1988 at which several witnesses expressed the desire to form a working group which would study the river situation, and present a mutually agreeable solution to the Captain of the Port within ninety days. The Captain of the Port agreed to this, and significant progress was made. The ninety day deadline having expired, the working group has requested an additional extension of the comment period. The Captain of the Port has agreed to this, and has extended the comment period to December 1, 1988.

These emergency regulations are being effected in order to continue to safeguard life and property while that group continues its work.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water),

Security measures, Vessels, Waterways.

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Old River and Cuyahoga River, Cleveland, Ohio.

(a) *Location.* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5"N, 81 degrees 42'33.5"W, which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and Fifty (50) feet upriver from 41 degrees 29'48.4"N, 81 degrees 42'44"W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29'51.1"N, 81 degrees 42'32.0"W, which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1"N, 81 degrees 42'27.6"W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9"N, 81 degrees 42'10.7"W, which is the knuckle toward the downriver corner of the Nautical stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5"N, 81 degrees 42'9.7"W, which is the knuckle toward the upriver corner of the Nautica stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2"N, 81 degrees 42'10"W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8"N, 81 degrees 42'02.3"W), to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5"N, 81 degrees 41'57.2"W, which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29'33.7"N, 81 degrees 41'57.5"W, which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41"N, 81 degrees 41'38.6"W, which is the end of the chain link fence between Jim's Steak House and Shipper's C&D.

(b) *Regulations.*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in §165.23 of this part.

(2) *Exception.* Vessels may *transit*, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation. Cargo vessels of 1,600 gross tons (GT) or greater conducting loading/unloading operations may temporarily moor in the zones until operations are complete.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Waivers received under the previous emergency rule will remain in effect until December 1, 1988. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1,600 GT or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1,600 GT or greater.

(c) *Effective date:* This regulation becomes effective on August 1, 1988. It terminates on December 1, 1988 unless sooner terminated by the Captain of the Port.

Dated: July 22, 1988.

Patrick A. Turlo,

Captain of the Port, Cleveland, OH.

[FR Doc. 88–17624 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 232

Authority of Postal Inspectors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to correct an omission in postal regulations by including in the regulations governing conduct on postal premises (39 CFR Part 232) a statement of the authority of Postal Inspectors to enforce those regulations.

EFFECTIVE DATE: August 5, 1988.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268–4415.

SUPPLEMENTARY INFORMATION: Postal Inspectors derive enforcement authority from 39 U.S.C. 404(a)(7), 18 U.S.C. 3061, and 39 CFR 233.1. These broad grants of authority include the power to enforce all Postal Service rules and regulations. The purpose of this final rule is to include a specific statement of that authority in the postal regulations governing conduct on postal premises. Therefore, to carry out the purpose stated above, 39 CFR 232.1(q) is amended by adding a new subsection specifically permitting Postal Inspectors to enforce postal building regulations. Accordingly, 39 CFR Part 232 is amended as follows:

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—[AMENDED]

1. The authority citation for Part 232 continues to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1988, Pub. L. 100–202; 18 U.S.C. 3061.

2. In § 232.1, paragraph (q)(3) is added to read as follows:

§ 232.1 Conduct on Postal property.

* * * * *

(q) * * *

(3) Postal Inspectors may likewise enforce regulations in this section.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–17632 Filed 8–4–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3425–6]

North Carolina: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revision is available for public review and comment.

DATES: Final authorization for North Carolina shall be effective October 4, 1988, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business September 6, 1988.

ADDRESSES: Copies of North Carolina's program revision application are available during 9:00 a.m.–5:00 p.m. at the following addresses for inspection and copying: North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, NC 27602; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA, Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: (404) 347–4216 Contact: Gail Alston.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street, NE.; Atlanta, Georgia 30365; Phone No: 404/347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with Final Authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. North Carolina

North Carolina initially received final authorization on December 31, 1984. North Carolina received authorization for a revision to its program on March 25, 1986, for the Redefinition of Solid Waste Provision promulgated January 4, 1985. On January 13, 1988, North Carolina submitted a program revision application for additional program approval. Today North Carolina is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's application, and has made an immediate final decision that North Carolina's hazardous waste program revision satisifies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until September 6, 1988. Copies of North Carolina's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of North Carolina's program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between July 1, 1985–June 30, 1986.

		Federal promulgated date
• Closure, Post Closure, and Financial Responsibility Requirements.	51 FR 16422.....	May 2, 1986.
• Listing of Spent Pickle Liquor.	51 FR 19320.....	May 28, 1986.

North Carolina is not authorized by the Federal government to operate the RCRA program on Indian lands and this authority will remain with EPA.

C. Decision

I conclude that North Carolina's application for program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(2), 6926, 6974(b).

Date: July 7, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-17705 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3425-7]

South Carolina; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: South Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed South Carolina's application and has made a decision, subject to public review and comment, that South Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Carolina's hazardous waste program revisions. South Carolina's application for program revision is available for public review and comment.

DATES: Final authorization for South Carolina shall be effective October 4, 1988, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on South Carolina's program revision application must be received by the close of business September 6, 1988.

ADDRESSES: Copies of South Carolina's program revision application are available during 8:30 am to 4:30 pm, Monday through Friday, at the following addresses for inspection and copying: Hartsill Truesdale, Bureau of Solid and Hazardous Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201; US EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; US EPA, Region IV, Library, 345 Courtland St., NE, Atlanta, Georgia 30365, Phone: 404/347-3016, Gayle Alston, Librarian. Written comments should be sent to Otis Johnson, Jr. at the address below.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., U.S. EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. South Carolina

South Carolina initially received final authorization on November 22, 1985. South Carolina received authorization for revisions to its program for Radioactive Mixed Waste on September 13, 1987. On July 7, 1987, South Carolina submitted a program revision application for additional program approvals. Today, South Carolina is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed South Carolina's application, and has made an immediate final decision that South Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Carolina. The public may submit written comments on EPA's immediate final decision up until September 6, 1988. Copies of South Carolina's application for program revision are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

Approval of South Carolina's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by

the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

South Carolina is today seeking authority to administer the following Federal requirements promulgated between 1/23/83–7/14/86.

		Federal promulgation data
• Biennial Report	48 FR 3977	1/28/83
• Permit Rules—Settlement Agreement.	48 FR 39622	9/1/83
• Interim Status Standards.	48 FR 52718	11/22/83
• Chlorinated Aliphatic Hydrocarbon Listing.	49 FR 5313	2/10/84
• National Uniform Manifest.	49 FR 10490	3/20/84
• Permit Rules Settlement Agreement.	49 FR 17716	4/24/84
• Listing Warfarin + Zinc Phosphide.	49 FR 19922	5/10/84
• Lime Stabilized Pickle Liquor Sludge.	49 FR 23284	6/5/84
• Exclusion of Household Waste.	49 FR 44980	11/13/84
• Interim Status Standards Applicability.	49 FR 46095	11/21/84
• Satellite Accumulation.	49 FR 49571	12/20/84
• Interim Status Standards for Landfills.	50 FR 16044	4/23/85
• Listing of Spent Pickle Liquor.	51 FR 19320	5/28/86
• Hazardous Waste Tank Systems.	51 FR 25422	7/14/86
• Redefinition of Solid Waste.	50 FR 614	1/4/85

South Carolina is currently revising analogous regulations to address EPA's comments of February 12, 1988 for the following provisions:

		Federal promulgation date
• Interim Status Standards—Applicability.	49 FR 46095	11/21/84
• Closure Post Closure and Financial Responsibility Requirements.	51 FR 16422	5/2/86

South Carolina will file a final application for these provisions in early October 1988. Upon receiving an application for these provisions EPA will evaluate the submission and publish a decision for these provisions in the **Federal Register.**

South Carolina is not authorized by the Federal Government to operate the RCRA program on Indian lands and this authority will remain with EPA.

C. Decision

I conclude that South Carolina's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Carolina is granted final authorization to operate its hazardous waste program as revised. South Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 6054(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Greer C. Tidwell,

Regional Administrator.

Dated: July 13, 1988.

[FR Doc. 88–17706 Filed 8–4–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–482; RM–5974]

Radio Broadcasting Services; Hartford, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Hartford, Vermont, as that community's first FM service, at the request of William A Wittik. The allotment can be made in compliance with the Commssion's minimum spacing requirements using the center city coordinates of 43–39–38 and 72–20–20. Concurrence of the Canadian government has been obtained. With this action this proceeding is terminated.

DATES: Effective September 12, 1988. The window period for filing applications will open on September 12, 1988, and close on October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–482, adopted June 29, 1988, and released July 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments, is amended under Vermont by adding Hartford, Channel 282A.

Steve Kaminer,

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

[FR Doc. 88–17682 Filed 8–4–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-554; RM-5999]

Radio Broadcasting Services; Titusville, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C2 for Channel 252A at Titusville, Florida and modifies the license for Station WSCF(FM) at the request of the licensee Frazer Broadcasting Corporation, to provide for a first wide coverage area station. Coordinates for Channel 251C2 at a restricted site 17.8 kilometers east of the city are 28-37-00 and 80-38-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 29, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-554, adopted June 23, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended for Florida by adding Channel 251C2 and removing Channel 252A at Titusville.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-17675 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-456; RM-5917]

Radio Broadcasting Services; Port Charlotte, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C2 for Channel 261A at Port Charlotte, Florida, and modifies the Class A license for Station WEEJ(FM) to specify the new channel, at the request of the licensee, Charlotte Broadcasting Company. The transmitter site for Channel 261C1 is 7.8 miles southeast of the city at coordinates 26-53-40 and 82-01-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-456, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Port Charlotte, Florida, Channel 261C1 is added and Channel 261A is deleted.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-17678 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-507; RM-5997]

Radio Broadcasting Services; Mountain Home, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 256C1 for Channel 257A at Mountain Home, Idaho, and modifies the Class A license for Station KJCY(FM) to specify the new channel at the request of the licensee, Mountain Home Broadcasting. The coordinates for Channel 256C1 at the Class A site are 43-12-29 and 115-34-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-507, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Mountain Home, Idaho, Channel 256C1 is added and Channel 257A is deleted.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-17677 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-606; RM-6023]

Radio Broadcasting Services; Rexburg, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C2 for Channel 252A at Rexburg, Idaho, and modifies the license for Station (KKQT(FM), to specify operation on the Class C1 channel at the request of the licensee, Tri County Radio Corporation. Coordinates for Channel 251C2 are 43-48-55 and 111-46-09. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-606, adopted June 29, 1988, and released July 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Rexburg, Idaho, Channel 252A is deleted and Channel 251C2 is added.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-17683 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-091; Notice 4]

RIN: 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule implements the Truth in Mileage Act of 1986 (Pub. L. 99-579). As required by that statute, this rule requires that the seller (or other transferor) of a motor vehicle must provide mileage disclosure on the title document or, if the title document does not include a space for mileage disclosure (during the phase-in period) or if the motor vehicle has not been previously titled, it requires that the seller or other transferor must make a written disclosure of mileage on a separate document. Also as required by the statute, this rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that, at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds a record retention requirement for lessors and auction companies. In addition, consistent with the statute, this rule amends the form and content of the odometer disclosure statement and sets forth the procedures that a State may follow in requesting technical assistance, extensions of time or approval of alternate State mileage disclosure requirements. Finally, this rule clarifies the definition of transferor and transferee in the current regulation and extends the current record retention requirement for dealers and distributors.

DATES: Sections 580.10, 580.11 and 580.12 shall be effective September 6, 1988. As provided by the statute, all other provisions are effective April 29, 1989.

Any petitions for reconsideration of this rule must be received by NHTSA not later than September 6, 1988.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

The Truth in Mileage Act of 1986

After hearing testimony that odometer fraud costs consumers hundreds of dollars per purchase, in excess of $2 billion annually; that a significant part of this fraud involves high mileage, recent vintage vehicles; and that odometer fraud occurs frequently under conditions where cars have been sold through mass sales techniques such as auctions, Congress determined that, for the protection of consumers, legislation was needed to strengthen the provisions of the current law with respect to disclosure of motor vehicle mileage when motor vehicles are transferred, and enacted the Truth in Mileage Act of 1986, Pub. L. 99-579. This Act amends Title IV of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1981-1991. The Truth in Mileage Act requires that any transfer of ownership and any application for retitling or licensing of any transferred motor vehicle be accompanied by the title of the vehicle. The title must include a space for the mileage of the vehicle and be printed by secure process, or if not printed, be set forth by a secure system, in order to decrease the possibility of counterfeiting or altering titles. New applications for titles must be accompanied by the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor.

The new law also requires the lessor of vehicles with long-term leases to advise his lessee that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership, and the penalty for noncompliance. In addition, the new law requires that auction companies establish and maintain records for at least four years following the date a vehicle is sold at the auction. The records must include the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.

Finally, the new law directs this agency to provide technical assistance at the request of any State to conform its laws to this rule and to the Truth in Mileage Act, and authorizes the agency to provide extensions of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the new Federal

criteria. It also directs the agency to approve of alternate motor vehicle mileage disclosure requirements if they are consistent with the purposes of the new law.

The Notice of Proposed Rulemaking

In response to this statutory mandate, NHTSA published a notice of proposed rulemaking (NPRM) on July 17, 1987, 52 FR 27028 (1987). The NPRM proposed to make mileage disclosure a condition of title and require that titles be set forth by a secure process, amend the form and content of the odometer disclosure statement, add disclosure requirements for lessors and lessees, extend the current record retention requirement for dealers and distributors and add a record retention requirement for lessors and auction companies. In addition, we proposed procedures that a State may follow in requesting technical assistance, extensions of time or approval of an alternative State mileage disclosure requirement. Finally, we proposed to clarify some aspects of the current regulation by redefining transferor and transferee and adding a definition of mileage.

The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies involved in odometer enforcement. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed discussion of the provisions of the Truth in Mileage Act and explained the agency's rationale for proposing each of the requirements. This preamble follows a similar organizational format, to allow the reader to easily compare the two documents, with additional detail given to the disclosure requirements.

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, we proposed to amend the definition of the term "transferor" to include the transferor's agent. Similarly, we proposed to expand the definition of transferee to include the transferee's agent. One commenter stated that the proposed definitions were simple and straightforward and the National Automobile Dealers Association (NADA) supported the objective of the modifications to the extent that they will assist in the successful prosecution of wrongdoers who have avoided convictions based on a technicality. However, NADA and other commenters did express some concern.

Anglo-American Auto Auction, Inc. (Anglo) feared that the definition of transferor may be misconstrued to require that *every* agent who participates in the transfer must complete an odometer statement and suggested that the definition be amended to include that "transferor" also "means any person, who as agent makes the disclosure of odometer information" required by the regulation. However, Anglo correctly noted that the definition of transferor and transferee, if properly construed, would *not* include salespersons or clerks who may play a role in the transfer process, but who, as a legal matter, do not actually transfer the ownership of the vehicle. Since no other commenters misconstrued the definition and since we have the opportunity to clarify the definition of transferor in this preamble, we will not adopt Anglo's proposal.

The National Auto Auction Association (NAAA) asserted that the expansion of the definitions goes beyond the intent of the Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the Truth in Mileage Act, and exceeds NHTSA's rulemaking authority. NAAA noted that neither the Cost Savings Act nor the Truth in Mileage Act defines transferor and transferee; that transfer is defined in the Cost Savings Act; and that NHTSA was directed by the Cost Savings Act to promulgate rules concerning a written disclosure by the transferor to the transferee. NAAA argues that there is nothing in either statute which gives NHTSA the authority to define transferor and transferee. Furthermore, NAAA argues that an administrative agency cannot alter a duly enacted statute through the use of its own regulations and cannot distort plain and obvious statutory language.

As NAAA correctly notes, neither statute defines transferor and transferee. Furthermore, the legislative history of these statutes does not define these terms and Congress did not explicitly direct NHTSA to promulgate definitions of them. However, Congress directed NHTSA to prescribe rules requiring any transferor to give a written mileage disclosure to the transferee in connection with the transfer of ownership under section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988. Implicit in this directive is the authority to define the terms. The District Court for the District of Columbia has held that where Congress has delegated certain interpretive powers, either explicitly or implicitly, the agency's interpretation should receive deference. Where neither the statute nor legislation history explicitly define a statutory term, an agency's interpretation must be accepted if it is "based on a permissible construction of the statute, * * *" *Pa. Public Utility Com'n* v. *United States*, 749 F.2d 841, 849 (D.C. Cir. 1984), citing *Chevron, U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843 (1983). The definitions, as proposed, are consistent with the definition of "transfer" which is "to change ownership by purchase, gift, or any other means." 15 U.S.C. 1982(2). Furthermore, rather than going beyond the legislative intent or distorting the statutory language, these definitions help to further the expressed Congressional intent of "establishing safeguards for the protection of consumers with respect to the sale of vehicles having altered odometers", 15 U.S.C. 1981. It closes loopholes which have limited the Government's ability to prosecute certain violations of the odometer laws because of an ambiguity in the definition. (*See, U.S.* v. *Powell*, 806 F.2d 1421 (9th Cir. 1986)). Therefore, these definitions do not exceed NHTSA's statutory authority. Finally, in accordance with the Administrative Procedures Act, these definitions are promulgated pursuant to notice and comment. *See also*, 37 FR 25727 (1972); 38 FR 2978 (1973).

NAAA also objected to the proposed definitions because "this exposes a variety of persons to liability * * * who are not owners of the motor vehicles being transferred. In addition to including employees and independent contractors working for the transferor, this expanded definition would include any person using a power of attorney from the transferor, and frequently, that person not only has no knowledge regarding the accuracy of the odometer reading, but has no means of conducting an investigation to ascertain the accuracy of the odometer reading." NAAA asked that the definitions be limited to including employees working for the owner or authorized to transfer ownership of the motor vehicle. Further concern about the definition of transferor was expressed by a coalition of commenters, "the coalition", consisting of NADA, NAAA, the American Association of Motor Vehicle Administrators (AAMVA), the Automotive Trade Association Executives (ATAE), the American Car Rental Association (ACRA) and the National Independent Automobile Dealers Association (NIADA). The

coalition asserted that those who accurately complete a transferor's mileage disclosure based on the transferor's secure power of attorney (a power of attorney that is set forth by a secure printing process or other secure process) should not be considered agents of the transferor and asked that these individuals be specifically excluded from the definition of transferor. However, the coalition did not include any rationale in support of its position. Similarly, the Texas Automobile Dealers Association proposed, without additional comment, that anyone who completes a disclosure statement on behalf of a transferor based upon a power of attorney should be excluded from the definition of transferor. We will not incorporate these suggestions into the final rule. Contrary to the assertion of NAAA, the expansion of the definitions does not expose more people to liability, but merely closes a loophole where defendants have escaped liability due to ambiguity in the current regulation. While the case law has limited the Government's ability to prosecute a company employee who falsely certifies odometer mileage on the ground that the employee is not a transferor, (*see, U.S.* v. *Powell,* 806 F.2d 1421 (9th Cir. 1986)), we believe that where appropriate under general legal principles of agency, an employee or other agent of a principal should be liable for his actions and that a principal should be liable for the actions of its agents. With regard to whether a person has any "knowledge" concerning the accuracy of the reading, the Motor Vehicle Information and Cost Savings Act itself recognizes that in order to be found liable under the Act, a person must have an intent to defraud for civil liability, or knowingly and willfully commit any act in violation of the Act to be convicted criminally. Through these definitions, we are stressing the importance of mileage. It is incumbent upon anyone acting as an agent, even those with a power of attorney, to obtain mileage information from the appropriate source. The definitions of transferor and transferee are adopted as proposed.

We proposed a definition of mileage for two reasons. First, the definition makes clear that there is a difference between mileage and odometer reading. Second, the proposed definition reflects the agency's position that a person may lawfully replace odometers which register kilometers with those that register miles traveled. No comments were received on this proposal and it is adopted in this final rule.

Definitions of lessee and lessor, consistent with the TIMA's definition of leased motor vehicle, were proposed to clarify all references to these persons. The National Association of Fleet Administrators (NAFA) and PHH Group, Inc. (PHH) requested that the definition of lessee be expanded to include the agent for the lessee. PHH noted that expanding the definition of lessee would allow for flexibility since a lessee could be an entity other than the operator of the vehicle. NAFA noted that an expanded definition of lessee would be more flexible and would allow the lessee's drivers to sign the disclosure statements in accordance with current business practices. In addition, NAFA commented that the expanded definition would parallel the definitions of transferor and transferee. The agency agrees with the commenters and has expanded the definition of lessee to include the agent of the lessee, which is consistent with the definitions of transferor and transferee. Also, for consistency, the agency has also expanded the definition of lessor to include the agent of the lessor.

In accordance with the Congressional intent to encourage new technologies which will provide increased security for titles, we proposed to broadly define the terms "secure printing process" and "other secure processes" as "any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye." 3M requested that the definition be amended to read, in lieu of visible to the naked eye, "easily detected under recommended viewing conditions." 3M stated that the definition, as proposed, could be interpreted to mean without the aid of a verification device and asserted that any verification process that precludes the use of a supporting device is too restrictive. We have not adopted 3M's suggestion. The intent of the Truth in Mileage Act is to provide a paper trail for the protection of consumers. Therefore, any alteration should be visible to the purchaser of a vehicle who would not routinely have the aid of a verification device. Furthermore, any alteration should be visible to title clerks reviewing titles prior to the issuance of new titles, and time constraints may prohibit clerks from examining every title with the aid of a verification device. We adopt the definition as proposed. However, we note that this definition does not preclude a State from utilizing any process which would include a verification device for additional document security.

Security for Motor Vehicle Titles

According to the new law, beginning on April 29, 1989, each State motor vehicle title must be set forth by a secure printing process or other secure process. To implement this statutory requirement, we proposed the addition of a new section 580.4 concerning the security of motor vehicle titles. To assist the States in their efforts to issue motor vehicle titles which comply with the requirements of the Truth in Mileage Act and this rule. Appendix A, consisting of a list of technologies that we proposed to deem to be secure processes, was included. Comments were requested on the appropriateness of the methods listed in Appendix A and on whether our final rule should contain a procedure by which a State could seek our concurrence in an alternative method of document security beyond those listed in the final rule.

The comments concerning the title and Appendix A were divergent. At one extreme, 3M suggested that NHTSA require the title be set forth by one of the secure processes listed in Appendix A and that Appendix A be amended to include all available security processes which would be ranked as to the level of security they provide. At the other extreme, AAMVA and several of its member jurisdictions commented that Appendix A is superfluous and unnecessarily limiting, and urged that it be deleted. They asserted that individual jurisdictions should remain free to utilize any processes, including new technologies, without having to secure approval from NHTSA. Other commenters suggested that security paper be added to Appendix A. One commenter urged the addition of a hologram. Another noted that intaglio printing with latent images is a combination of two features and explained that high resolution printing refers to how the original art was prepared.

To allow for maximum administrative discretion on the part of the States, we will not adopt 3M's suggestion to list and rank all secure processes. However, in lieu of deleting Appendix A, we have expanded and corrected it based on the comments received. Appendix A has been included to aid the States in the selection of a secure process and in no way limits the States or adds new requirements or restrictions beyond those listed in the rule itself. Furthermore, States are not required to seek our concurrence in an alternative method of document security beyond those listed in Appendix A. We defer to the States to establish specific

standards on secure processes and will not limit the administrative discretion of the States. However, if it becomes evident that the secure processes being used by the States fail to deter and detect counterfeiting and/or unauthorized reproductions and do not allow alterations to be visible to the naked eye, further rulemaking may have to be undertaken on the security of titles.

We also proposed as a requirement under this new section 580.4, that if a State allows subsequent reassignments of the vehicle to be recorded on a document other than the title itself, the document used to reassign title must be set forth by the same secure process. AAMVA and several of its member jurisdictions urged the agency to amend this requirement to read, rather than by the "same" secure process, by "*a* secure process." Arkansas asserted that it would be a financial burden for the State to use a reassignment document that incorporates the same secure process as its title. Other commenters were opposed to the proposal in its entirety. Texas, Vermont and the Arkansas Independent Auto Dealers Association cited cost burdens and indicated that the requirement was beyond the terms of the statute. Wisconsin, on the other hand, asked that NHTSA eliminate separate reassignment documents, noting that NHTSA expressed concern about issuing odometer disclosure statements on a separate piece of paper. In the alternative, Wisconsin suggested that if reassignments on a separate document are allowed, NHTSA should require the reassignment documents to bear control numbers and that the number be included on the title. Wisconsin also requested that NHTSA require the States to record the control numbers of the reassignment documents they give to each dealer and that each dealer keep a record of the reassignment document issued for each vehicle.

NHTSA has reconsidered its proposed requirement in response to these comments. While separate reassignment documents are not mentioned in the Truth in Mileage Act, they are often an integral part of the transfer process. Since reassignment documents are a logical extension of the title, requiring secure reassignment documents is a logical extension of the statutory requirement. Allowing secure titles to be transferred by a sheet of bond paper is incongruous. Therefore, the final rule requires secure reassignment documents. However, NHTSA has concluded that it can satisfy its statutory obligations and avoid unnecessary financial burdens upon the States by adopting the proposal of AAMVA and several of its member jurisdictions. Accordingly, the final rule has been changed to permit reassignment documents to be set forth by "a secure process" in lieu of the requirement that they be set forth by the same secure process as the title. By requiring reassignment documents to be secure, we hope to achieve deterrence of odometer fraud without the elimination of their use. Furthermore, although adopting Wisconsin's suggestion that secure reassignment documents be controlled may lessen the incidence of odometer fraud, we have no explicit statutory authority to require that any title documents be controlled in the manner suggested by Wisconsin. We will not limit the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. Nothing in the Act or this rule should be read as precluding a State from using control techniques on these documents.

Odometer Disclosure Requirements

A. Titles Issued by States

According to the new law, in addition to being secure, each State motor vehicle title must "indicate the mileage disclosure required to be made under subsection (a) * * *" 15 U.S.C. 1988(d)(2)(A)(ii). Subsection (a) refers to the disclosure requirements promulgated by NHTSA. To implement this provision, paralleling the language of the statute, we proposed, "Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred * * *"

Recognizing the importance of knowing whether the odometer reading on the title represents the actual distance a vehicle has traveled, Wisconsin proposed several qualifying notations or "brands" to include with the odometer reading. These brands would accompany the odometer reading on the face of the newly issued title. These proposed brands include: (1) ACTUAL MILEAGE; (2) MILEAGE EXCEEDS THE MECHANICAL LIMITS; (3) TRUE MILEAGE UNKNOWN; (4) EXEMPT FROM ODOMETER DISCLOSURE; and (5) ODOMETER TAMPERING VERIFIED. Wisconsin noted that AAMVA adopted a resolution (Resolution 19) at its 1987 International Conference in Washington, DC, which states that "all jurisdictions include, in conjunction with the odometer reading which is to be recorded on the certificate of title, a notation that the recorded mileage is actual, not actual, or exceeds the mechanical limits."

Since the definition of mileage is "actual distance that a vehicle has traveled", the title must include a notation as to whether the odometer reading reflects the actual mileage, exceeds the mechanical limits or does not reflect the actual mileage. With regard to the brands proposed by Wisconsin, we do not adopt the brand "TRUE MILEAGE UNKNOWN". As we discussed in the preamble to the proposed rule, true mileage unknown does not take into account situations where although the odometer does not reflect the actual mileage, it is not unknown. 52 FR 27026 (1987). Therefore, the brand should read "NOT THE ACTUAL MILEAGE." With regard to the brand "EXEMPT FROM DISCLOSURE REQUIREMENTS", while NHTSA will not require this notation, States are not prohibited under this final rule from adopting it. Finally, with regard to the brand "ODOMETER TAMPERING VERIFIED", we feel that this brand may lead to confusion upon subsequent sale of a vehicle because this statement is not included as part of the disclosure statement; however, States may use this brand in addition to the brand "NOT THE ACTUAL MILEAGE".

B. Disclosure on Title

With regard to the disclosure of mileage, we proposed that "[at the time of transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign title." We invited comments on how titles could be made available to transferors where the vehicle is subject to a lien in order to meet the specific requirements of the law.

The majority of comments to the NPRM have centered around this provision. Several commenters endorsed this requirement. Wisconsin firmly declared that the vehicle documentation should accompany the vehicle itself, otherwise, the buyer's best efforts to protect himself are effectively limited to a quick visual inspection of the vehicle and the odometer. The National Association of Consumer Agency Administrators (NACAA) stated that having the title accompany the vehicle is the most efficient mechanism for achieving meaningful and accurate disclosure to consumers. The Massachusetts Registry of Motor Vehicles wholeheartedly supports the strict odometer disclosure and title transfer requirements of the proposed regulations. The National Odometer

Enforcement Association passed a resolution supporting the proposed rule.

Other commenters either asked that NHTSA define "transfer of ownership" or proposed definitions of the term. The Virginia Independent Automobile Dealers Association opined that transfer of ownership is a process that begins when funds are received by the dealer and ends when the customer receives either the new title or the document necessary to secure new title. NAFA asked NHTSA to define transfer of ownership as the point in time when title changes hands. AAMVA expressed concern that this requirement would be interpreted to mean that the title be present at the time the vehicle itself is transferred. AAMVA noted that over forty jurisdictions allow the lienholder to hold title and that this requirement would result in extensive regulatory and/or legislative change. AAMVA noted that this would be inconsistent with Congress' intent that the Truth in Mileage Act would have minimal impacts on the States. Other commenters consistently stressed the burden upon transferors when the vehicles are under lien in States where the lienholder holds the title. The transferor could not obtain the title unless the lien is paid, and he may not be able to pay it off until he sells the vehicle. NIADA asserted that "* * * it is impossible in many situations for a dealer to conclude a transaction with the title present at the time of sale." Numerous car dealers exclaimed that if dealers had to have titles when selling vehicles, burdensome and costly changes in their recordkeeping practices would result. The Credit Union National Association noted that its members expressed concern that if financial institutions were unable to retain titles, they may feel the necessity to curtail car lending programs. Senator J. James Exon, Representative Thomas J. Tauke and Representative John Bryant asserted that "Congress never intended to require odometer disclosures, which are currently made at the time of a sales transaction, to be placed upon, and made only through, the title document itself. Such a requirement would needlessly increase regulatory burdens and disrupt the purchase and sale of used automobiles, not only by dealers but also by individual consumers. Rather, Congress intended that the mileage recorded on the new title be consistent with the mileage disclosed when the buyer and seller signed the sales contract." Anglo summed up its concerns by stating that a requirement that the title be present at the time of initial sale is inappropriate because of the unnecessary disruption of the efficient operation of the used car vehicle market it would cause for individuals and automobile dealers alike.

To alleviate the burden that might result if NHTSA were to require the title to be present at the time of sale, the coalition urged the Agency to accept an "owner copy" title procedure. Under the owner copy title procedure, title sets consisting of a title and a designated owner copy would be set forth by a secure printing process or other secure process and each would contain an appropriate Federal odometer disclosure statement or statements. In cases where the initial transferor does not have possession of the title at the time of sale or trade-in, the coalition proposed that NHTSA shall permit the transferor to disclose the mileage on the designated owner copy provided that the disclosure statement is fully completed, dated, and signed by the transferor. The owner copy and all subsequent reassignments would be presented with any application for new title. In addition, the coalition suggested that if the transferor does not have either the owner copy or the title, NHTSA should permit the use of a special power of attorney, which would also be submitted at the time of application for new title.

Some commenters, aware of the suggestion of a two part title system, expressed concern over the expenses which might result from its implementation. Delaware stated that there would be costly form and programming changes.

NHTSA has carefully evaluated these comments in light of the Truth in Mileage Act, Congressional intent, policy considerations and investigative experience. To alleviate unnecessary cost burdens on the States and the automobile industry while continuing to provide a paper trail in accordance with the law and Congressional intent, we have amended the language in the proposed regulation concerning the time of the disclosure. The words, "In connection with the transfer of ownership * * *" will replace "At the time of transfer of ownership * * *", as the introductory phrase of § 580.5(c).

In issuing interpretations of the Motor Vehicle Information and Cost Savings Act, NHTSA has stated that "transfer of ownership" is determined by State law. Therefore, we have not, now, attempted to define the phrase.

Furthermore, Congress noted that "[o]ne of the major barriers to decreasing odometer fraud is the lack of evidence or 'paper trail' showing incidence of rollbacks," and enacted section 2 of the Truth in Mileage Act. Section 2 prohibits the licensing of any vehicle for use in any State unless the title which is issued by the State to the transferee following a transfer "contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date the disclosure." It also states that a motor vehicle may not be licensed for use in any State unless, if the transferor's title contains a space for a mileage disclosure, the disclosure is signed and dated by the transferor. Section 408(d) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d). Under these provisions, a disclosure must be made on the title. In the Committee Report accompanying the new law, Congress specifically noted that the amendments require that "any transfer of ownership or licensing of any vehicle be accompanied by the title of such vehicle." H.R. Rep. 833. 99th Cong., 2nd Sess., 18 (1986). We recognize that the remarks of Senator Exon and Representatives Bryant and Tauke differ from the Congressional intent set forth in this Committee Report. However, these comments were set forth in their letter to the Agency after the enactment of the statute, and although we have given their comments careful consideration, we note that postenactment statements of legislators have no probative weight in interpreting statutes and represent only the personal views of the legislators. *Bread Political Action Committee* v. *Federal Election Commission*, 455 U.S. 577 (1982); *Petry* v *Block*, 697 F.2d 1169 (DC Cir. 1983). Additionally, if we were to adopt the comments of these legislators, there would continue to be a duplication of disclosure since there would be a separate odometer disclosure statement and the disclosure of odometer information on State titles because the majority of the States also require this information. In the regulatory evaluation prepared to analyze the details of this rule, NHTSA estimates that annual savings of $2.6 million would result from the elimination of the separate odometer disclosure statement for used vehicle transfers.

We recognize that, under State laws, "transfer of ownership" may not occur at one point in time, but is a process. Under this final rule, at some point during that process, the title, containing the disclosure statement completed and signed by the transferor, must be given to, and signed by, the transferee. The transferee may obtain the title in person or the title may be mailed to the transferee. We caution dealers and

distributors who are required by this part to retain a copy of each odometer statement which they issue that, if they mail the title, they must ensure that they obtain a copy of the statement signed by the transferee in accordance with the record retention requirements of this part.

Under this requirement, the integrity of the paper trail has been maintained since the disclosure will be on the title and consumers will be able to see the disclosures and examine the titles for alterations, erasures or other marks. Furthermore, consumers will learn the names of previous owners that appear on the title.

We have not adopted the suggestion of the coalition to permit the use of a special power of attorney. A secure power of attorney would not allow transferees to see the actual title document, including the disclosures, and could easily be discarded. A forged substitute could then be submitted to the titling office. This final rule is flexible in permitting the disclosure in connection with the transfer of ownership and will not result in the burdens anticipated by the coalition.

NAAA argued that nothing in the Truth in Mileage Act requires that the title be the sole and exclusive means of making the full disclosure and that nothing prohibits the use of an odometer disclosure statement on a form separate from the title or reassignment forms. NHTSA agrees that the Act does not require the title to be the only means of making a disclosure. A seller may issue a separate odometer disclosure statement *in addition to* the one on the title. As we noted in the preamble to the proposed rule, dealers and distributors who elect to issue a disclosure statement in addition to the one on the title, must retain a copy of these separate disclosure statements, and a copy of the front and reverse sides of the title. Recognizing a doubled paperwork burden and resulting cost increases, NHTSA will not require a disclosure statement apart from the disclosure on the title.

C. Information Required To Be Disclosed

With regard to the information to be disclosed, the proposed § 580.5 continued to require certain information that the agency had already required and included some additional provisions. The proposal continued to require the transferor to sign the disclosure and to certify whether to the best of his knowledge the odometer reading reflects the vehicle's actual mileage. No comments were received on this proposal and it is adopted in the final rule.

We also proposed to continue to require the transferor to disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, while proposing to delete any reference to specific designed mechanical odometer limitations. NADA urged NHTSA to eliminate any requirement for the certification that the odometer reading reflects the amount of mileage in excess of the designed mechanical limit, stating that it is not required by the Act and it is redundant with the requirement that the transferor certify that the odometer reading does not reflect the actual distance a vehicle has traveled. The Minnesota Automobile Dealers Association (MADA) noted that in situations where the odometer has a mechanical limit of 99,999 and the vehicle has traveled in excess of 200,000 miles, there would be no way to indicate this since the language of the proposed regulation requires the transferor to certify if he knows "the odometer reading reflects the amount of mileage in excess of the mechanical limit." This rule does not adopt these suggestions. Knowing whether a vehicle has traveled over 100,000 miles is important in determining its condition and value. Additionally, to allow someone with a vehicle that has traveled over 100,000 miles to merely certify that the odometer reading does not reflect the actual mileage permits unscrupulous transferors to make oral misrepresentations as to the vehicle's actual mileage. Furthermore, it is unusual for passenger vehicles to travel in excess of 200,000 miles. While trucks and buses register such high mileage, transferors of vehicles having a Gross Vehicle Weight Rating over 16,000 pounds are exempt from the the disclosure requirements. If transferors of vehicles that have travelled in excess of 200,000 miles wish to issue a disclosure statement, they may make a line through the words "the amount of", or alternatively, add an additional statement that would indicate how much over the mechanical limit the reading is. The requirement that the transferor disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer is adopted as proposed.

As an alternative to certifying that the mileage is actual or exceeds the mechanical limits, we proposed that if the odometer reading does not reflect the actual mileage and should not be relied upon, the transferor must continue to disclose this fact. We also proposed that this disclosure include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage. We received two comments about the warning notice. Delaware asserted that a warning notice would be burdensome because it would increase the required space on the reverse side of the title. From another perspective, NACAA applauded the addition of the warning notice which provides additional consumer protection. NHTSA has adopted this requirement as proposed in the NPRM. The addition of a warning notice which may be as simple as "WARNING ODOMETER DISCREPANCY" will not increase the size of the title, but may appear in space which is normally available at the end of the certification statement. For an example of the spacing of the warning notice, see Appendices B and C.

In addition, we proposed to continue to require the transferee's signature. Although NHTSA has required the transferee's signature on the disclosure statement since 1977, we received many comments on this proposal because the disclosure will be, in many instances, on the title. NACAA, NADA and Comerica (an automobile leasing company) support this proposal. Other commenters had concerns. Arkansas asserted that requiring the signature of the transferee is neither expressed nor implied in the Truth in Mileage Act and is an "absolute misinterpretation of section 2." Alabama stated that the purchaser is unavailable at the time the transaction is consummated and opposed this requirement.

Although the Truth in Mileage Act does not require the transferee's signature, it also was not intended to lessen the tools available to law enforcement officers in the enforcement of odometer laws. Again, we note that this is *not* a new proposal. Rather, it has been a requirement since 1977, authorized by the Motor Vehicle Information and Cost Savings Act. As noted in the preamble to the NPRM, NHTSA considers the transferee's signature to be essential because it is an acknowledgement that the purchaser is aware of the mileage or any problems with the odometer reading. The signature prevents the purchaser from later alleging that he was not informed of the mileage or that the mileage on the vehicle's odometer was different from that appearing on the odometer disclosure statement. Furthermore, the buyer's signature is important to investigative and prosecutorial efforts. Since we have expanded the period of time in which the mileage disclosure

may be made, Alabama's concern has been addressed because, at some point in connection with the transfer of ownership, the purchaser will be available to sign the title.

Judging from the comments, some aspects of the proposed requirement for the transferee's signature were misunderstood. The Delaware Department of Motor Vehicles (Delaware) stated that the transferee should not be required to sign the disclosure statement if required to sign the document elsewhere. NHTSA agrees. If the transferee's signature is required to reassign title, and if the disclosure appears in the same section of the title as the reassignment, the title does not need to include another space for the transferee's signature. As NHTSA has said in the past, information concerning the disclosure need not be repeated if found elsewhere on the document. *See,* 38 FR 2978 (1973). NAFA suggested that NHTSA consider adding a provision noting that an increase in mileage may have taken place prior to the signature of the transferee. NAFA was concerned that a "transferee may balk at attesting to" a disclosure statement if the odometer shows a higher reading. This final rule does not adopt NAFA's suggestion since the transferee does not attest to the disclosure statement, but rather acknowledges receipt of it.

We proposed to continue to require the transferor's current address, the vehicle's model and a reference to the Federal odometer law, including a statement of liability and penalties. Although the address, model and reference are required under the current regulation, they were the subject of some comments.

Noting that the disclosure would be on the title, Delaware feared that requiring the transferor's current address would increase the size of the title. As indicated by Appendix B, if the transferor's address is on the title, and normally it is on the face of the title, it does not have to be included again. Therefore, the titles should not increase in size and we have adopted the requirement for the transferor's current address as proposed.

With regard to the proposal to require a vehicle's model, Delaware asserted that many States do not include the model. Citing cost concerns, Delaware asked that a requirement for model apply to 1989 models and newer. The Oregon Department of Transportation, Motor Vehicle Division (Oregon) noted that its legislature recently removed a model requirement from Oregon law relating to odometers. Oregon asserted that this information is obtainable through the Vehicle Identification Number (VIN) and should not be required to be listed separately.

Vehicle identifying information, including the model, is currently required so that the vehicle would be readily identifiable if the disclosure statement became separated from the other transfer documents. *See,* 38 FR 2979. This rationale is still valid since separate disclosure statements will continue to be issued by transferors of new vehicles which have not been previously titled and by transferors of vehicles titled on nonconforming titles during the phase-in period. Furthermore, the model helps individuals to verify the correctness of the VIN and two-thirds of the States already include the model on their titles. Therefore, we have adopted the proposal to require the model, which is consistent with the current regulation, into this final rule.

As for the reference to the Federal odometer law, we proposed that the disclosure statement "refer to the Motor Vehicle Information and Cost Savings Act and State law, where applicable, and shall state that incorrect information may result in civil liability and civil or criminal penalties." Delaware claimed that the wording is too lengthy and will never be read. NADA proposed to change this requirement to read that "each document containing one or more odometer disclosures shall contain a statement in capital letters as follows: AN INACCURATE OR UNTRUTHFUL STATEMENT MAY MAKE YOU LIABLE FOR DAMAGES AND FOR CIVIL AND CRIMINAL PENALTIES UNDER APPLICABLE LAW." NADA's stated purpose in this proposal is to simplify the statement and make it more forceful. Requiring that it be stated only once on a multi-disclosure document will afford States the flexibility to combine titles with multi-assignment documents. NADA's proposal was supported by the coalition.

While we have not adopted NADA's proposal in form, we agree to simplify and strengthen the reference to the law and penalties. Therefore, the proposal is amended to require a reference to the "Federal odometer law" in lieu of the Motor Vehicle Information and Cost Savings Act. This is consistent with the agency's opinion that the actual law need not always be cited. 45 FR 784 (1980). For clarification, we have added a requirement that the reference indicate that "failure to complete", in addition to providing false information, will result in liability. To make the statement more forceful, references to "civil liability and civil or criminal penalties" will be amended to read "fines and/or imprisonment." To allow for flexibility for States and transferors, reference to State law is discretionary. Finally, if the required information appears once on the document, it does not have to be repeated.

Section 580.5, as proposed, differed from the current § 580.4 in the following ways. We proposed in § 580.5(f) that the transferee, in addition to signing the odometer disclosure statement, print his name. Recognizing that the printed name is helpful in the course of an investigation to identify the person signing the statement where signatures are difficult to read, NACAA supported the proposal. On the other hand, NADA asserted that the requirement for the transferee's printed name should be deleted as redundant with the proposed requirement for the transferee's name and current address, § 580.5(c). NHTSA agrees that in some instances the provisions may result in the same information. However, the transferee whose name and address are required under § 580.5(c) may be a dealer, corporation or other business entity. The signature of these transferees is the signature of the employee or agent acting in their behalf. The employee or agent would print his name. Therefore, the requirements of § 580.5(f) are not redundant and will be adopted as proposed.

In § 580.5(c) we also proposed that the odometer reading cannot include tenths of miles. NACAA and NADA supported this proposal and no comments were received in opposition to it. Therefore, we have adopted this proposal in the final rule.

In addition, we proposed to shorten the odometer disclosure form by eliminating the second set of certifications. No comments were received on this proposal and it is adopted in this final rule.

While no one commented on the elimination of the second set of certifications, we received several proposals for additional certifications. An individual suggested that in order to provide as much information as possible in a formal manner to the transferee, the disclosure statement should include the following: "Optional: The correct mileage is ____." While there is no prohibition against a seller providing this information, NHTSA sees no investigative or consumer benefit to be gained in adding this requirement which would outweigh the burden of including another statement on the title, in light of space limitations. A buyer can, and certainly should, request such information. Yet, anyone who has deliberately violated the odometer laws

is likely to provide an untruthful statement. Therefore, NHTSA will not adopt this suggestion.

Another commenter suggested that a provision be added to require the transferor "to certify that the odometer was repaired or replaced, reset to zero, the mileage on the original odometer was ____, and that the mileage on the present odometer reflects the mileage on the vehicle in excess of that amount." The commenter asserted that this disclosure would allow sellers to explain the odometer discrepancy and create a paper trail as a backup to the notice posted on the left door frame. Without this statement, the commenter felt that unscrupulous sellers could repair or replace the odometer, then simply disclose that the odometer reading is not the actual mileage. Due to space limitations, we must reject this suggestion. Although a shorter disclosure might sacrifice clarity to a degree, NHTSA regards this as an acceptable price for gaining the benefit of combined title and disclosure. Note that there is no prohibition against the seller advising the purchaser of the reason for certifying that the odometer reading does not reflect the actual mileage.

While the proposed regulation sets forth the information which must be disclosed, it also includes, in Appendices B and C, sample forms which may be used. Appendix B is a sample disclosure form which a State may wish to include on its titles. Appendix C is a sample disclosure form which may be used if a vehicle has not been previously titled such as a new vehicle or a vehicle imported into the United States from a foreign country. 3M endorsed the inclusion of Appendices B and C and noted that they provide standard formats. 3M suggested that the placement of information relevant to security, § 580.5(c)(1)–(5), be located consistently in one position on the certificate of title and on other ownership documents. To allow the States the maximum administrative discretion as possible, we will not adopt 3M's suggestion, but have included samples forms in Appendices B and C to the final rule. These Appendices have been changed from the Appendices as proposed to conform to the requirements of the final rule. We wish to repeat that the purpose of these appendices is to serve as examples; they do not introduce new requirements or restrictions into the rule.

Recognizing that titles for vehicles issued prior to the enactment of a State law or regulation implementing the title requirements of the final rule may not contain all the information required by this rule, in § 580.5(g) we proposed that the written disclosure be executed as a separate form when the title does not conform to the final rule. NADA supported the use of a separate disclosure statement when "old", nonconforming titles are involved in the transfer. However, the Chairman of the Consumer Affairs and Protection Committee of the New York State Assembly feared that this section creates a loophole. Discussing the disclosure information on the title, he noted that "to be effective, this information should appear on the title itself, because this document *must* accompany each vehicle transfer, and is recorded by most state Departments of Motor Vehicles. This may mean instituting a phase-in period for all States to develop titles containing appropriate spaces." Rather than creating a loophole, § 580.5(g) recognizes the necessity of a phase-in period. As noted in the preamble to the NPRM, the Truth in Mileage Act does not say that motor vehicles can only be licensed if the transferee includes with the application the transferor's title which includes a disclosure. Rather, the law states that only "* * * if that title contains the space referred to in paragraph (2)(A)(iii) * * *" would the transferor sign and date a disclosure statement. Therefore, § 580.5(g) is adopted in this final rule as proposed.

D. Power of Attorney

Prior to the issuance of the NPRM, NIADA asked whether a power of attorney could be granted so that the transferor could sign on behalf of the transferee to avoid any problems in making a disclosure on the title where the vehicle is subject to an existing lien. Although the proposed rule did not include a provision concerning powers of attorney, in the preamble to the proposed rules, we recognized that powers of attorney are necessary in transfers involving an incompetent or deceased owner. However, we emphasized that powers of attorney that allow the same person to sign a disclosure statement as both the transferor and transferee result in only one party to the transfer being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail" and defeat the purpose of the Act.

AAMVA agreed with our position, noting that where the transferee holds the power of attorney of the transferor, the same party is signing the title as seller, to transfer ownership and to disclose mileage, and as the buyer. AAMVA stated that this situation is ripe for fraud if the person holding the power of attorney is intent on rolling back the vehicle's mileage. Several of AAMVA's member jurisdictions concurred in this position.

Wisconsin suggested that a new paragraph be added to § 580.5 providing that no person may sign a disclosure as both the transferor and transferee. Wisconsin also suggested that the additional paragraph provide that no transferor may give his power of attorney or otherwise appoint as the transferor's agent, any agent or employee of the transferee for the purpose of executing an odometer disclosure statement.

An automobile dealer in an area with a large military population declared that the new law would preclude a member of the military from giving a spouse a power of attorney to sell a vehicle and to verify the odometer reading.

Other commenters, concerned that the title had to be present at the time of sale, hoped that the use of a power of attorney would ease the burden that title present might have imposed. NIADA noted that if the power of attorney is submitted with the old title when applying for a new title, and a copy is required to be maintained by the dealer, any alteration would be immediately apparent and the paper trail would be maintained. The coalition, as noted above, suggested the use of a special power of attorney which (i) is set forth by a secure process; (ii) contains the appropriate Federal odometer disclosure statement and (iii) is fully completed, dated and signed by the transferor. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's power of attorney and mileage disclosure thereon. The title, together with the power of attorney and all subsequent title reassignments, shall be presented with any application for title.

To guard against a situation ripe for fraud, we have adopted a new paragraph 580.5(h) which provides that no person may sign a disclosure statement as both the transferor and transferee in the same transaction. It also provides that no transferor may give his power of attorney or otherwise appoint as the transferor's agent, any transferee of the same vehicle in the same transaction for the purpose of executing an odometer disclosure statement. Conversely, no transferee may give his power of attorney or otherwise appoint as the transferee's agent, any transferor of the same vehicle in the same transaction for the purpose

of executing an odometer disclosure statement.

We have not adopted the coalition's suggestion. The burden that a "title present" requirement might have presented has been alleviated since disclosure must now occur in connection with the transfer of ownership. In addition, the integrity of the paper trail with a secure power of attorney would not be maintained because one party to the transaction would not see the title and the power of attorney could be easily discarded and a new one forged. Furthermore, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents and maintain additional records.

Exemptions

We proposed a new § 580.6 which exempts certain transferors from issuing odometer disclosure statements. With one exception as noted below, this new section exempts the same transferors exempted by former § 580.5.

3M questioned why any exemptions are allowed, asserting that in 3M's opinion, the odometer reading of any vehicle, regardless of its age, weight, or method of sale, is a significant contributor to the vehicle's worth. In response to 3M's inquiry, NHTSA notes that the odometer reading is not used as a guide to the value of certain vehicles. For example, maintenance records have traditionally been relied upon as the principal guide to the condition of trucks and buses. Antique vehicles are primarily valued because of factors such as rarity and age rather mileage. 38 FR 2978 (1973).

Several Federal courts have reviewed NHTSA's authority to create exemptions and reached different conclusions concerning the validity of former § 580.5. *See, Witkowski v. Mack Trucks, Inc.*, 712 F.2d 1352 (11th Cir. 1983); *Barker v. Cawthon Motor Co.*, 629 F.2d 410 (5th Cir. 1980); *Mitchell v. White Motor Credit Corporation*, 627 F. Supp. 1241 (M.D. Tenn. 1986); *Davis v. Dils Motor Co.*, 566 F. Supp. 1360 (S.D.W. Va. 1983). Nevertheless, as noted in the preamble to the NPRM, while some courts have determined that NHTSA's authority to create exemptions may be limited, we believe that NHTSA has the authority to create exemptions for transferors of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885 (1982). Therefore, we have adopted § 580.6 as proposed, with one exception.

We proposed to exempt a transferor of a vehicle that is twenty-five years old or older from the requirements of issuing a disclosure statement. We received numerous requests to lower the vehicle age. AAMVA, several of AAMVA's member jurisdictions and the coalition suggested that the exemption be given to a transferor of a vehicle that is ten years old or older. This suggestion is based on studies done in Wisconsin and Iowa which indicate that the incidence of odometer tampering on vehicles over ten model years old is disproportionately small as compared to the vehicle population represented by that age group. The commenters also noted that the selling price of vehicles over ten years old is not typically based on the odometer reading. AAMVA and several of its members felt that extending the exemption to the transferor of a vehicle ten years old and older would not frustrate the Congressional intent behind the odometer laws since the odometer reading on a vehicle of this age is not used to determine the condition or value of the vehicle. NACAA recommended that the absolute maximum age of vehicle for which the transferor should be required to issue an odometer statement is fifteen years. Based on a study the California Department of Motor Vehicles conducted for NHTSA in 1981, the Director of the Department proposed that the regulation be changed to exempt transferors of vehicles that are six years old and older. Oregon noted that the State legislature, after expressing strong concern about the cost effectiveness of requiring odometer disclosures on vehicles older than eight years, amended Oregon law to require odometer disclosure information only for vehicles eight years old and newer.

NHTSA has reconsidered its proposed requirement in response to these comments. Purchasers of vehicles six and eight years old still rely on the odometer reading to determine the condition and value of the vehicle. While the California study may indicate that odometer tampering is not as prevalent in vehicles six years old and older, the study concerned leased vehicles and does not represent the total used car population. For vehicles over 10 years old, the value is mostly determined by the overall condition and appearance, not primarily mileage. Accordingly, the final rule has been changed to exempt a transferor of a vehicle that is ten years old and older.

Finally, we have not adopted the proposal of American Bankers Association which suggested that the rule exempt from the disclosure requirements, lessors when selling the leased vehicle to the lessee at the end of the lease period. To adopt this suggestion would permit an unscrupulous lessee to purchase the car, roll back the odometer, and sell the car to an unsuspecting buyer for more than its actual value. The lessee's purchaser would be unable to ascertain the veracity of the disclosure statement he receives from the lessee since there would be no previous disclosure record.

Leased Vehicles

In accordance with the Congressional mandate, we proposed a new § 580.7 applicable to leased vehicles. Under the proposed § 580.7, lessors were required to provide written notice to the lessee that ownership of the vehicle is being transferred, that the lessee is required by law to provide the lessor with a written disclosure regarding the mileage and the penalties for noncompliance. The American Automotive Leasing Association (AALA) urged NHTSA to delete the requirement that "ownership of the vehicle is being transferred", since notifying lessees at that time would be financially burdensome. AALA claimed that a rule requiring a notice that is contemporaneous with the decision to terminate the lease and a separate notice for each car is unwarranted. Rather, AALA and PHH requested that the regulations permit flexibility as to when the lessor gives notice to the lessee of the lessee's obligation to make the required disclosure. Both noted that there are various possibilities for notifying lessees. The notification could be incorporated into the lease agreement, in mailings sent to the clients throughout the year and in forms completed by the lessee to initiate transfer. We have considered these comments and have determined that the requirement that the lessor give notice to the lessee that "ownership of the vehicle is being transferred" is not required by the law and may result in an unnecessary burden for lessors. Therefore, we adopt AALA's proposal and this requirement has been deleted from the final rule. This will allow flexibility as to when the notice of the lessee's disclosure requirements and penalties for noncompliance is given. Furthermore, we will not require a separate notice for each vehicle. Should this flexibility impede or delay investigative action, further rulemaking may need to be undertaken on this matter.

As noted above, the proposed rule also provided that the lessor must give written notice to the lessee that the lessee is required by law to disclose the mileage of the lease vehicle and the penalties for failure to disclose the information. PHH emphasized that the

penalties for lessee noncompliance should be explicitly stated in the notice and recommended that Appendix D, the Disclosure Form for Leased Vehicles, be amended to explicitly state the nature of the civil or criminal penalties to which a lessee is subject for failure to comply. PHH believes that a more explicit statement of penalties will help to stress the lessee's risk in noncompliance, will encourage greater accuracy of odometer readings and will motivate the prompt return of the lessee disclosure form to the lessor. We agree with PHH's comments. Therefore, consistent with our decision to amend the citation to the law under § 580.5(c), § 580.7(a) will require that the lessor's notice to the lessee contain a reference to the federal odometer law and state that failing to complete the disclosure or providing false information may result in fines and/or imprisonment. For purposes of consistency, we will not require a more detailed statement. However, lessors may include additional information such as an explicit statement of the fines and imprisonment term provided by law. Accordingly, we have amended the reference to the law contained in Appendix D and note that Appendix D is only an example of the minimum requirements under the law.

The disclosure required to be made by the lessee under our proposal paralleled that made by the transferor. It required that the person making the disclosure print his name, provide the current odometer reading (not to include tenths) and date the statement. In addition, we proposed that the disclosure include the lessee's name and current address; the lessor's name and current address; the identity of the vehicle including its make, model, year, body type and vehicle identification number; and the signature of the lessor. We received no comments on these proposals and they have been incorporated into this final rule.

We also proposed that the disclosure include the date that the lessor notified the lessee of disclosure requirements and the date that the completed disclosure was received by the lessor. Delaware asserted that it did not understand the importance of these dates. According to Delaware, the date requirement merely necessitates more paper work and filing of records. NADA requested, without comment, the elimination of these date requirements. We will not grant NADA's request. These dates are important for investigative purposes. Our experience shows that dealers and distributors who have been required to maintain odometer disclosure statements under our regulations, upon request for those records, consistently ask investigators for the date of the record. Requiring these dates, in addition to the date of the statement, will aid in the investigation of allegations that the lessor never notified the lessee or that the lessee never gave the lessor a statement. Therefore, subsections 580.7(b) (7) and (8) are adopted as proposed.

In addition, we proposed that the lessee certify whether the odometer reading reflects the actual mileage, whether it reflects the amount of mileage in excess of the designed mechanical limit or whether it is not the actual mileage. As it did with regard to the disclosure by the transferor, NADA urged NHTSA to eliminate the requirement that the disclosure of mileage is in excess of the designed mechanical limit of the odometer. Again, we have not adopted NADA's suggestion. As noted above, to allow someone with a vehicle having over 100,000 miles to certify that the odometer does not reflect the actual mileage permits oral misrepresentations as to the vehicle's actual mileage. Furthermore, while not specifically referencing the requirement as it applied to leased vehicles, MADA expressed concern with the requirement that a person certify that "the odometer reading reflects the mileage in excess of the designed mechanical limits." NHTSA has addressed this concern above as it relates to the disclosure by the transferor. For the same reasons, we have not adopted MADA's suggestion to amend the statement. The certification requirements are adopted as proposed.

To implement section 2(e) of the Truth in Mileage Act, section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(e), we proposed to permit a lessor who transfers ownership of a vehicle, without obtaining possession of the vehicle, to disclose, on the title, the mileage indicated by the lessee unless he has reason to believe that the lessee's disclosure does not reflect the actual mileage of the vehicle. PHH noted that it is not unusual for vehicles to be driven substantial distances by the lessee after the lessee's disclosure statement is received by the lessor. PHH asked whether it is NHTSA's intention for lessors to certify, in connection with the transfer of ownership, that the odometer does not accurately reflect the mileage of the vehicle. If the lessee had certified that the odometer reading reflected the actual mileage the vehicle had traveled, it is not NHTSA's intention that lessors indicate that the odometer reading does not reflect the actual mileage. When the lessee certifies that the odometer reading reflects the actual mileage, the lessor may also certify that the odometer reading reflects the actual mileage. This certification would be based upon the lessee's statement and the lessor's knowledge of the additional mileage.

Several commenters raised issues that had not been considered in the NPRM. The National Vehicle Leasing Association (NVLA), AALA and PHH noted that the proposed rule did not refer to the situation where the lessee fails to provide the lessor with a disclosure. PHH requested that NHTSA address the action a lessor is expected to take when a lessee fails to provide an odometer statement or fails to provide a statement in a reasonable time, and what remedies or sanctions apply. AALA requested that NHTSA affirmatively state that in cases where the lessor has notified the lessee but the lessee has failed to provide a disclosure, the lessor may sell the vehicle, making the appropriate disclosure. NVLA took AALA request one step further, by suggesting what constitutes an appropriate disclosure. NVLA proposed that where the vehicle is to be transferred to the lessee, the lessor should be permitted to complete the transaction and certify that the mileage information is "unknown." If the lessee failed to provide a disclosure and the lessor is selling the vehicle to a third party, NVLA proposed that the lessor should be permitted to certify that to the best of the lessor's knowledge, the odometer reading, provided to the lessor by the third party purchaser, reflects the actual mileage.

Congress expressly stated that "[i]f the lessee fails to comply, the lessor who has provided the required notice is not intended to be precluded from transferring ownership of the vehicle." H.R. Rep. 833, 99th Cong., 2nd Sess. 33 (1986). Therefore, the lessor may sell the vehicle and make the disclosure based upon available information. When the lessor is selling the vehicle to the lessee, we will not permit the lessor to complete the transaction and certify that the mileage is unknown. The lessor has leverage in this situation and may retain possession of the title to influence the lessee to provide a disclosure. When the lessor is selling a vehicle to a third party purchaser, the lessor must make a certification to the best of his knowledge based upon the available information, including condition reports, maintenance receipts, previous history of lessee vehicle returns and similar business records. To permit a lessor

who does not take possession of a vehicle to routinely certify that the odometer reading reflects the actual mileage, as suggested by NVLA, opens the door to fraud on the part of the third party purchaser who obtains possession of the vehicle from the lessee. In this situation, the third party purchaser could tell the lessor the odometer reading is less than it actually is, resulting in an inaccurate statement by the lessor, and then roll back the odometer.

Finally, PHH requested that NHTSA address the remedies that are available to the lessor against a lessee who fails to provide a disclosure. Under section 409 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1989, the lessor may bring a civil action against the lessee. Note that under this section, the lessor must prove an intent to defraud. If the lessor included a provision concerning the disclosure in the lease agreement or contract, the lessor may have an additional cause of action. The requirement that lessees provide a disclosure is also enforceable by the chief law enforcement officer in the State where the violation occurred and by the Federal government.

Record Retention

The NPRM proposed a new § 580.8 concerning the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors. This proposed section increased, from four to five years, the length of time dealers and distributors who are required by this part to issue an odometer disclosure statement shall retain odometer disclosure statements. Lessors shall retain for five years following the date they transfer ownership of the leased vehicle, the odometer statement they receive from their lessee. These dealers, distributors and lessors shall retain the original or a photostat, carbon or other facsimile copy of each odometer statement they issue and receive. The proposal was phrased broadly to include any media by which such information may be stored, provided there is no loss of information.

Some commenters felt that the extension to five years was both reasonable and logical given the five year statute of limitations for criminal violations of the Federal odometer laws. Others raised questions concerning the necessity of retaining, in whole or in part, copies of disclosure statements.

One commenter asserted that since the odometer disclosure statement will be on the title, it will be cumbersome and difficult for the transferor to retain a copy. The commenter stated that it is unlikely that States will provide multiple copy titles and that a large number of dealers do not have access to a photocopy machine. This commenter also claimed that it is against the law in California, and possibly in other States to photocopy a title document. NHTSA does not find this retention requirement to be overly burdensome. In light of increased technology, portable photocopy equipment is available at reasonable prices. The rule allows flexibility in retention, provided there is no loss of information. Finally, while it may be illegal to possess as true or genuine, a false or forged document, it does not appear to be illegal to copy a title solely for the purpose of maintaining records. Alan Metier of the California Department of Motor Vehicles, Legal Office, stated that neither the California Vehicle Code nor the California Government Code prohibit the photocopying of titles for record retention purposes. In the course of its investigations, NHTSA has received copies of titles from auto auctions, dealers, leasing companies and State departments of motor vehicles, including the California Department of Motor Vehicles.

NAFA asked whether the transferor is required to retain a copy of the full disclosure signed by the transferee or if he is only required to maintain a copy of his disclosure. The rule requires the transferor to retain a copy of the full disclosure, including the transferee's signature. In addition, for purposes of meeting the requirement to retain a copy of the disclosure statement which includes the buyer's signature, AALA asked NHTSA to allow the transferor who is also a lessor to obtain a power of attorney from the buyer authorizing the transferor to sign the mileage disclosure on behalf of the buyer. Because this would allow the transferor to sign as both the transferor and transferee, thus creating a situation ripe for fraud, AALA's suggestion has not been adopted.

PHH asserted that it is not reasonable to place a legal requirement on the transferor to retain records over which he does not have control and that any transferee with intent to commit fraud by tampering with the title document, will simply alter the document after the transferor's copy has been made. PHH argued that since the States will be receiving and retaining fully executed title documents, there seems to be little net benefit to require transferors to duplicate these records. Therefore, PHH requested that the final rule require only that the transferor retain a copy of the disclosure statement prior to release of the document to the transferee. AALA suggested that the regulation allow a transferor who is also a lessor to fulfill the retention requirements when he retains a copy of the disclosure statement which he forwards for the buyer's signature and requests the buyer to sign the statement and return a copy.

We have not adopted the requests of AALA or PHH. Requiring the transferor to retain a copy of the disclosure signed by the transferee is essential to enforcement. It prevents a buyer from altering the mileage and later alleging that the altered mileage is the mileage he received from the transferor, since the transferor would have a copy of the disclosure with the higher mileage and the transferee's signature. This unaltered copy would not be on file with the State titling office. In addition, requiring the transferor to retain a copy of the disclosure signed by the transferee protects the transferor. With regard to the reasonableness of a legal requirement on the transferor to retain records over which he does not have control, NHTSA assesses civil penalties for failure to retain records in accordance with section 412 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1990b. This assessment takes into account the nature, circumstances, extent and gravity of the violation of the retention requirement committed, and other matters as justice may require.

Consistent with the requirements of the Truth in Mileage Act, we also proposed the addition of a new § 580.9 which concerns the odometer record retention by auction companies. We proposed that each auction company retain, for five years, the following information: the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction company took possession of the motor vehicle. This information can be retained in any way that is systematically retrievable. We did not propose to require that this information be included on any special form, but noted that it may be part of the auction invoice or other document currently used by auction companies or be maintained as a portion of a computer data base.

The New Jersey State Police (New Jersey) questioned the requirement that auction companies retain the odometer reading on the date which the auction "took possession of the vehicle." The commenter was concerned that auctions could assert that they do not "take possession", but merely act as a broker between the buyer and seller. In lieu of a requirement that the odometer reading

on the date the auction took possession be retained, New Jersey proposed that the reading on the date of sale be retained.

We have not adopted New Jersey's proposal. While an auction does not take ownership of vehicles, it does routinely take physical possession of them. When the cars are registered for sale, the keys to the each vehicle are given to the auction which prepares the cars for auction and drives them onto the auction block. Furthermore, the language in the rule is consistent with the provisions of the Truth in Mileage Act.

NAAA, while not specifically addressing the retention requirements as they relate to auctions, did declare that the retention requirements are more than reasonable and are necessary to enable successful prosecutions. No other comments were received on this proposal and it has been adopted in the final rule.

Procedures for State Requests for Assistance, Approval or Extension

Section 408 (d) (1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d) (1) and (2), requires the Secretary of Transportation to assist a State in revising its laws to comply with the new disclosure requirements for transferors and transferees, upon "application" from the State. In response to this statutory mandate, the agency proposed a new § 580.10 which sets forth the procedures a State may follow to apply for technical assistance. No comments were received concerning the procedures for requests for assistance and they are adopted in the final rule as proposed.

Section 408(f) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988 (f), states that subsection (d), concerning motor vehicle titles, and subsection (e), concerning lessors and lessees, shall apply in a State unless the State has in effect alternate motor vehicle mileage requirements approved by the Department. We proposed, in a new § 580.11, that a State may petition for an exemption from the disclosure requirements and stated that notice of either grant or denial of a petition for approval of alternate motor vehicle disclosure requirements would be issued to the petitioner. We received no comments on this section. However, for consistency, and to better reflect the provisions of the Truth in Mileage Act, we have changed the language in the title of this section and its subsection (a) from "exemption from disclosure requirements" to "approval of alternate motor vehicle disclosure requirements." In all other respects, the proposal is adopted in this final rule.

We proposed a new § 580.12 which specified the procedures that may be followed by a State to request an extension of time in the event that it requires additional time beyond April 29, 1989, to conform its laws to the Motor Vehicle Information and Cost Savings Act and this part. The proposed § 580.12 also allowed for the renewal of an extension of time.

The agency received three comments on proposed § 580.12. NACAA recommended that NHTSA not extend the compliance deadline except where a need has been demonstrated along with significant evidence that the State is making progress toward compliance through realistic efforts calculated to meet the compliance date. The association stressed that the rule cannot really be effective until all States are in compliance. If one State does not require mileage disclosures on the title, title laundering will continue. Arkansas explained that it had just purchased a two year supply of titles and noted that a severe financial burden would result if it was prohibited from using them. The Motor Car Dealers Association of Southern California (MCDASC) asked the agency to postpone certain provisions of § 580.5.

NHTSA has considered these comments. Nevertheless, the proposal will be adopted into this final rule. Section 2(c) of the Truth in Mileage Act allows for extension of time upon a request from a State. Consistent with the statute, we will provide extensions of time in the event that any State needs additional time in revising its laws to meet the new Federal criteria, beyond April 29, 1989, the new law's effective date. Because the statute requires NHTSA to ensure that the State is making reasonable efforts to achieve compliance, we must deny MCDASC's request for a blanket extension of time. We will only consider requests on a State by State basis. NHTSA agrees with NACAA that noncompliance with the Federal odometer laws and this rule would allow title laundering to continue. However, in light of the statutory guidelines, we will not amend the procedures set forth in the proposal. Finally, with regard to Arkansas' concern about discarding titles it may have on April 29, 1989, the agency will take into account financial and administrative burdens and will make every effort to grant reasonable extensions of time so that States may expend their current supply of titles.

Federalism Assessment

This rule has federalism implications affecting the relationship between the national government and the States. I certify that it has been assessed in light of the principles, criteria and requirements as outlined in Executive Order 12612. By limiting the effects on the States to the minimum required by the law, this final rule furthers the principles of federalism established by the Framers of the Constitution while striking an appropriate level of Federal involvement. Odometer fraud is national in scope with motor vehicles frequently being transferred over state lines in order to "wash" the titles. For this reason, Congress directed NHTSA to determine methods most effective for combatting the problem, through the implementation of the Truth in Mileage Act of 1986. NHTSA has consulted with the States to implement the law and has examined the comments submitted by approximately thirty-four States, AAMVA, NACAA and NOEA. While this rule requires that titles issued by the States be secure, and include a mileage reading and a space for the transferee to make a mileage disclosure at the time of a future transfer, this rule is consistent with the statutory mandate and allows the States the maximum administrative discretion possible in complying with these requirements. We have not required the States to seek our concurrence in an alternative method of document security beyond those listed in Appendix A nor have we required the States to include the disclosure information in a specific format. It is estimated that this rule will impose an additional cost on the States. The likely source of funding for the States will be from revenues generated by increasing the cost of titling motor vehicles. Over the past ten years, the States have demonstrated their ability to fulfill the purposes of this rule by reviewing and amending their titles in attempts to deter odometer fraud.

Regulatory Impacts

A. Costs to the States, Dealers, Distributors and Vehicle Purchasers

When the NPRM was issued, NHTSA had tentatively determined that the proposal was neither "major" within the meaning of Executive Order 12291, nor "significant" within the Department of Transportation regulatory policies and procedures. However, the agency invited comments with regard to costs. A regulatory evaluation, analyzing in detail the impacts of the proposal and this rule, has been prepared and placed in Docket 87-09. Any interested person

may obtain a copy of this regulatory evaluation by writing to NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

To summarize the evaluation, odometer fraud costs consumers between $3.3 billion and $4.1 billion annually. The requirement that the title be present at the time of transfer of ownership, originally proposed in the NPRM, would have increased operating costs by an additional $91–$196 million annually. To alleviate unnecessary cost burdens, while continuing to provide a paper trail in accordance with the law and Congressional intent, we have amended the language in the proposed regulation concerning the time of transfer. The result of this amendment is that the requirements of this final rule will increase some operating costs for States, dealers, distributors and vehicle purchasers by $6.5 million annually. Of this total, $3.9 million will result from costs associated with secured titles and reassignment forms. Most of this cost will be borne by the States. The remaining $2.6 million will result from new disclosure and retention requirements. Most of these costs will be borne by dealers, distributors and vehicle purchasers. However, this rule will permit the elimination of most separate odometer disclosure statements, resulting in a savings of roughly $2.6 million to dealers and distributors. If the procedures established by this rule reduce odometer fraud by as much as one tenth of one percent, it will be cost beneficial.

The agency has now determined that the impact of this final rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures.

B. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and has determined that it does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no Environmental Impact Statement has been filed.

C. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The net increase in operating costs resulting from this rule will be an estimated $3.8 million for states, and tens of thousands of dealers and distributors.

D. Paperwork Reduction Act

The requirements in this rule that dealers, distributors, lessors and auction companies disclose mileage information and/or retain odometer disclosure information are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1520. Accordingly, the information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1990 (OMB 2127–0047)

In consideration of the foregoing, Part 580 of Title 49 of the Code of Federal Regulations is revised to read as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

Sec.

580.1 Scope.
580.2 Purpose.
580.3 Definitions.
580.4 Security of title documents.
580.5 Disclosure of odometer information.
580.6 Exemptions.
580.7 Disclosure of odometer information for leased motor vehicles.
580.8 Odometer disclosure statement retention.
580.9 Odometer record retention for auction companies.
580.10 Application for assistance.
580.11 Petition for approval of alternate disclosure requirements.
580.12 Petition for extension of time.
Appendix A to Part 580 Secure printing processes and other secure processes.
Appendix B to Part 580 Disclosure form for title.
Appendix C to Part 580 Separate disclosure form.
Appendix D to Part 580 Disclosure form for leased vehicles.

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

§ 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408 (a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition; this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990(d) and 1988(g).

§ 580.2 Purpose.

The purpose of this part is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

§ 580.3 Definitions.

All terms defined in sections 2 and 402 of the Motor Vehicle Information and Cost Savings Act are used in their statutory meaning. Other terms used in this part are defined as follows:

"Lessee" means any person, or the agent for any person, to whom a motor vehicle has been leased for a term of at least 4 months.

"Lessor" means any person, or the agent for any person, who has leased 5 or more motor vehicles in the past 12 months.

"Mileage" means actual distance that a vehicle has traveled.

"Secure printing process or other secure process" means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.

"Transferee" means any person to whom the ownership in a motor vehicle is transferred, or any person who, as agent, accepts transfer of ownership in a motor vehicle for another, by purchase, gift, or any means other than by creation of a security interest.

"Transferor" means any person who transfers his ownership or any person who, as agent, transfers the ownership of another, in a motor vehicle by sale, gift, or any means other than by creation of a security interest.

§ 580.4 Security of title documents.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign

the title shall be set forth by a secure process.

§ 580.5 Disclosure of odometer information.

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(e) In addition to the information provided under paragraphs (c) and (d) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement and print his name.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and the transferee in the same transaction.

§ 580.6 Exemptions.

Notwithstanding the requirements of § 580.5:

(a) A transferor of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is 10 years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

§ 580.7 Disclosure of odometer information for leased motor vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

(1) The printed name of the person making the disclosure;

(2) The current odometer reading (not to include tenths of miles);

(3) The date of the statement;

(4) The lessee's name and current address;

(5) The lessor's name and current address;

(6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;

(7) The date that the lessor notified the lessee of disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor; and

(9) The signature of the lessor.

(c) In addition to the information provided under paragraphs (a) and (b) of this section,

(1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

§ 580.8 Odometer disclosure statement retention.

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

§ 580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain at its primary place of

business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(a) The name of the most recent owner (other than the auction company);

(b) The name of the buyer;

(c) The vehicle identification number; and

(d) The odometer reading on the date which the auction company took possession of the motor vehicle.

§ 580.10 Application for assistance.

(a) A State may apply to NHTSA for assistance in revising its laws to comply with the requirements of 408(d) (1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d) (1) and (2) and §§ 580.4 and 580.5 of this part.

(b) Each application filed under section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(3) Include a copy of current motor vehicle titling and/or disclosure requirements in effect in the State; and

(4) Include a draft of legislation or regulations intended to amend or revise current State motor vehicle titling and/or disclosure requirements to conform with Federal requirements.

(c) The agency will respond to the applicant, in writing, and provide a list of the Federal statutory and/or regulatory requirements that the State may have failed to include in its proposal and indicate if any sections of the proposal appear to conflict with Federal requirements.

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5 and 580.7 of this part.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation; and

(4) Explain how the State motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension. The effect of a denial is to require a State to conform to the requirements of §§ 580.5 and 580.7 of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

§ 580.12 Petition for extension of time.

(a) If a State cannot conform its laws to achieve compliance with this part by April 29, 1989, the State may petition for an extension of time.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted, by February 28, 1989, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590;

(3) Set forth a chronological analysis of the efforts the State has taken to meet the deadline, the reasons why it did not do so, the length of time desired for extension and a description of the steps to be taken while the extension is in effect.

(c) Notice of either the grant or denial of the petition is issued to the petitioner and will be published in the **Federal Register.**

(d) A petition for a renewal of an extension of time must be filed no later than 30 days prior to the termination of the extension of time granted by the Agency. A petition for a renewal of an extension of time must meet the same requirements as the original petition for an extension of time.

(e) If a petition for a renewal of the extension of time which meets the requirements of § 580.12(b) is filed, the extension of time will continue until a decision is made on the renewal petition.

Appendix A to Part 580—Secure Printing Processes and Other Secure Processes

1. Methods to deter or detect counterfeiting and/or unauthorized reproduction.

(a) Intaglio printing—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate.

(b) Intaglio Printing With Latent Images—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate. The three dimensional nature of intaglio printing creates latent images that aid in verification of authenticity and deter counterfeiting.

(c) High Resolution Printing—a printing process which achieves excellent art clarity and detail quality approaching that of the intaglio process.

(d) Micro-line Printing—a reduced line of type that appears to be a solid line to the naked eye but contains readable intelligence under strong magnification.

(e) Pantograph Void Feature—wording incorporated into a pantograph by varying screen density in the pantograph. The wording will appear when attempts are made to photocopy on color copiers.

(f) Hologram—a defraction foil substrate, produced from a negative which was made by splitting a laser beam into two separate beams to produce a three dimensional effect.

(g) Security Paper—paper containing a security watermark and/or a security thread.

2. Methods to allow alterations to be visible to the naked eye.

(a) Erasure Sensitive Background Inks—a process whereby the text is printed in a dark color ink over a fine line erasure-sensitive prismatic ink tint.

(b) Security Lamination—retro-reflective security laminate is placed over vital information after it has been entered to allow for detection of attempts to alter this information.

(c) Security Paper—paper which has been chemically treated to detect chemical alterations.

Appendix B to Part 580—Disclosure Form for Title

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

_____
(Transferor's Signature)

_____
(Transferee's Signature)

_____
(Printed name)

_____
(Printed name)

Date of Statement _____

Transferee's Name _____

Transferee's Address _____
(Street)

_____
(City) (State) (ZIP Code)

Appendix C to Part 580—Separate Disclosure Form

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

Make _____
Model _____
Body Type _____
Vehicle Identification Number _____
Year _____

_____
(Transferor's Signature)

_____
(Printed name)
Transferor's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Date of Statement _____

_____
(Transferee's Signature)

_____
(Printed name)
Transferee's Name _____
Transferee's Address _____
(Street)

_____
(City) (State) (ZIP Code)

Appendix D to Part 580—Disclosure Form for Leased Vehicle

Odometer Disclosure Statement (Leased Vehicle)

Federal law (and State law, if applicable) requires that the lessee disclose the mileage to the lessor in connection with the transfer of ownership. Failure to complete or making a false statement may result in fines and/or imprisonment. Complete disclosure form below and return to lessor.

I, _____ (name of person making disclosure, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

Make _____
Model _____
Body Type _____
Vehicle Identification Number _____
Year _____
Lessee's Name _____
Lessee's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Lessee's Signature _____
Date of Statement _____
Lessor's Name _____
Lessor's Address _____
(Street)

_____
(City) (State) (ZIP Code)
Date Disclosure Form Sent to Lessee _____
Date Completed Disclosure Form Received from Lessee _____
Lessor's Signature _____

Issued on August 2, 1988.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 88-17684 Filed 8-2-88; 2:57 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to the Queets River, Washington, at midnight, August 2, 1988, the ensure that the coho quota for this subarea is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with representatives of the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the recreational fishery quota of 20,000 coho salmon for the subarea will be reached by August 2, 1988. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from the U.S.-Canada border to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, August 2, 1988. Comments on this closure will be received through August 17, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FUTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species from the U.S.-Canada border to the Queets River, Washington, commenced on July 3, 1988, and was scheduled to continue through the earliest of September 5, 1988, or the attainment of either a subarea quota of 20,000 coho salmon or an overall quota of 29,800 chinook salmon north of Cape Falcon, Oregon. Based on the best available information, the recreational fishery catch in the subarea is projected to reach the subarea quota of 20,000 coho salmon by midnight, August 2, 1988, and therefore must be closed to further fishing.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from the U.S.-Canada border to the Queets River, Washington, effective midnight, August 2, 1988. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council, WDF, and ODFW regarding a closure of the recreational fishery between the U.S.-Canada border and the Queets River, Washington. The representatives of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ effective midnight, August 2, 1988.

Because of the need for immediate action, the Secretary of Commerce has

determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 17, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: August 2, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-17748 Filed 8-2-88; 4:55 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 71158-7288]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice to modify earlier restrictions to limit the levels of landings of sablefish taken in the groundfish fishery off the coasts of Washington, Oregon, and California in 1988, to announce its intent to further restrict landings of widow rockfish later in the year, and to seek public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress has been identified or is expected to occur if landings are not further restricted. This action is intended to lower fishing rates, reduce the likelihood of biological stress while allowing for some unavoidable incidental catches in other fisheries, and extend the landings of sablefish and widow rockfish as long as possible throughout the year.

DATES: New restrictions for sablefish are effective 0001 hour Pacific Daylight Time (PDT), August 3, 1988, until modified, superseded, or rescinded. Comments will be accepted through August 22, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6150, Rodney R. McInnis at 213-514-6202, or the Pacific Fishery Management Council (Council) at 503-221-6352.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at 50 CFR 663.22 specify that the Secretary of Commerce (Secretary) may reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Council has endorsed the determination of its Groundfish Management Team that if landings of sablefish and widow rockfish are not further restricted, the likelihood of biological stress on these stocks is increased because current fishing mortality rates exceed the rates which would take the acceptable biological catch (ABC).

Sablefish

Council recommendation: Increase the 1988 trawl allocation from 5,200 to 6,000 metric ton (mt), lower the trawl trip limit to one landing per week, not to exceed 2,000 pounds (including sablefish smaller than 22 inches), and change the nontrawl trip limit for sablefish smaller than 22 inches to 1,500 pounds or 3 percent of all sablefish on board, whichever is greater (round weights). All other provisions remain in effect.

Rationale: The ABC for sablefish in 1988 is 10,000 metric tons (mt), the midpoint of the optimum yield (OY) range of 9,200-10,800 mt. In January, the Council expressed its intent to manage for this midpoint, and allocated 5,200 mt to trawl gear and 4,800 mt to fixed (nontrawl) gear (53 FR 248, January 6, 1988). Currently, only two landings above 1,000 pounds are allowed in a week and sablefish may comprise no more than 6,000 pounds or 20 percent of all legal fish on board, whichever is greater, which could be taken in each of the two landings by vessels operating in the multispecies trawl fishery. This trip limit was designed to discourage targeting on sablefish and to extend the 5,200 mt quota until the end of the 1988 fishing season. The Council recommended that if projections indicate that trawl landings will exceed 5,200 mt before the end of the calendar year, as much as 800 mt could be added to the trawl allocation to minimize discards of sablefish caught incidentally while fishing for other species.

At its July 13-14, 1988 meeting, the Council reviewed the most recent landings data provided by the Groundfish Management Team which projected that the 5,200 mt trawl quota would be reached by August 25 under the current trip limit. If the full 800 mt were added to the trawl allocation, this quota would be reached by September 22 unless landings were slowed further. Sablefish can be a large component of the deepwater trawl fishery consisting of Dover sole, thornyhead rockfish, arrowtooth flounder, and sablefish. Discards of sablefish occur even under the current trip limit and are likely to increase when the trip limit is reduced. On the other hand, if the trip limit is not reduced and the trawl allocation is reached before the end of the year, all sablefish must be discarded thereafter. Under either scenario, discards will result. The Council considered it preferable to reduce the trip limit as soon as possible which would extend the fishery (and maintain availability of sablefish in the market) to the end of the year, rather than to reach the quota in August and prohibit all subsequent landings in 1988. Therefore, the Council recommended that only one landing per week of trawl-caught sablefish, not exceeding 2,000 pounds, be allowed. This will enable some incidental catches to be landed and a small but consistent supply of sablefish to be maintained in the market.

This 2,000 pound weekly trip limit includes trawl-caught sablefish smaller than 22 inches (total length) and therefore supersedes the current trip limit of 5,000 pounds for sablefish smaller than 22 inches.

The Council also heard testimony that the current trip limit for the nontrawl fishery of 1,500 pounds for sablefish smaller than 22 inches in total length (or 15.5 inches, if headed) was unduly restrictive for the catcher-processors that remain at sea for weeks at a time and land as much as 100,000 pounds from a single trip. As a result, a large catcher-processor is able to land only 1.5 percent of small fish in a 100,000 pound landing, whereas a vessel making shorter trips and smaller landings is able to land a higher percentage. Therefore, the Council agreed with industry representatives on a new trip limit of 1,500 pounds, or three percent of all sablefish on board (round weights) whichever is greater, for nontrawl landings of sablefish smaller than 22 inches. The new trip limit will reduce discards but will not affect the 4,800-mt nontrawl allocation of sablefish for 1988.

Widow Rockfish

The Council also heard testimony that the widow rockfish OY of 12,100 mt was expected to be reached before the end of the year, but that better data would be available in the next month or two. The Council recommended that the Secretary impose a 3,000 pound trip limit on widow rockfish landings if it becomes necessary to impose an incidental trip limit before October 1, 1988, in order to reduce biological stress by extending the fishery closer to the end of the year. Otherwise, the Council will reconsider this recommendation at its September meeting.

In its deliberations, the Council considered advice from its Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, the public, and a Groundfish Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, and the Groundfish Management Team.

Secretarial Action

The Secretary concurs with the Council's recommendations and announces the following changes to the restrictions imposed at the beginning of the year for sablefish and widow rockfish at 53 FR 248 (January 6, 1988):

(1) The allocation for trawl-caught sablefish is increased from 5,200 mt to 6,000 mt in 1988.

(2) For trawl-caught sablefish, only one landing per vessel may be made in a one-week period. This landing may not exceed 2,000 pounds (round weight). "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. This landing may consist of sablefish of any size.

(3) For sablefish caught with nontrawl gear, the trip limit for sablefish smaller than 22 inches (total length), or 15.5 inches headed, is 1,500 pounds or three percent of all sablefish on board (in round weights), whichever is greater.

(4) For widow rockfish, the Groundfish Management Team will make projections to determine the date that a trip limit of 3,000 pounds should be imposed in order to enable the 12,100 mt OY to be reached but not exceeded before the end of the year. If this date is projected to occur before October 1, 1988, the Secretary will impose a trip limit of 3,000 pounds which will be announced in the **Federal Register** and will become effective on the date which would enable the quota to extend as long as possible in 1988.

All other provisions still apply to the Pacific Coast groundfish fishery as set forth in the **Federal Register** (53 FR 248, January 6, 1988).

Other Fisheries

Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 663.28. If fishing for groundfish and pink shrimp, or spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**), during business hours until the end of the comment period.

This action is taken under the authority of 50 CFR 663.22 and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of any action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of trawl-caught sablefish are not immediately restricted, the trawl fishery for sablefish will be closed before the end of the year. Accordingly, further delay of this action is impracticable and contrary to the public interest, and this action is published in final form effective August 3, 1988.

The public has had the opportunity to comment on these management measures. The public participated in Groundfish Management Team and Council meetings in July 1988 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after this notice is published in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: August 2, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-17749 Filed 8-2-88; 4:55 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-8]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions recieved must identify the petition docket number involved and must be received on or before October 7, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on August 2, 1988.

Deborah E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25152	Frank J. Kelley	14 CFR Part 63	To establish special rules for military flight engineers or former military flight engineers to permit the issuance of FAA flight engineer certificates based primarily on military flight engineer training and experience in a component of the Armed Forces of the United States. *Denied July 25, 1988.*

[FR Doc. 88-17751 Filed 8-4-88; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 438

Proprietary Vocational and Home Study Schools

AGENCY: Federal Trade Commission.

ACTION: Termination of proposed rulemaking.

SUMMARY: The Federal Trade Commission terminates rulemaking with respect to proprietary vocational and home study schools. The Commission concludes that the age of the available evidence renders it inappropriate in this instance for a rule to be issued.

DATE: This withdrawal is effective August 5, 1988.

FOR FURTHER INFORMATION CONTACT: Walter C. Gross III, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580; (202) 326-3319.

SUPPLEMENTARY INFORMATION: On December 28, 1978, the Commission issued a Trade Regulation Rule on Proprietary Vocational and Home Study Schools. 43 FR 60796 (1978). In 1979, prior to its effective date, the rule was set aside and remanded to the Commission for further proceedings. *Katherine Gibbs School, Inc. v. FTC*, 612 F.2d 658 (2d Cir. 1979). The Commission has now decided to terminate this rulemaking for the reasons below:

1. The Commission opened this rulemaking on August 15, 1974. The rulemaking record was closed in January 1976. During that time the Commission received over 900 written comments and testimony from over 400 witnesses. Nevertheless, in *Katherine Gibbs*, the Second Circuit remanded the rule to the Commission for further proceedings, citing both substantive and procedural deficiencies.

2. When the Commission originally issued this rule in 1978, it stated: "The purpose of this rule is to eliminate currently abusive practices against vocational and home study school students and prospective students." 42 FR 60796 (1978). The 1978 evaluation of practices in the vocational schools field was based on the evidence gathered before the closing of the record in January 1976. Today, however, the rulemaking record has been closed for twelve years, and a substantial portion of that record consists of evidence now approaching twenty years in age. We are not confident, therefore, that the Commission can draw valid conclusions on the current practices of vocational schools from this evidence.

3. In addition, the Department of Education has informally proposed new regulations applicable to all schools participating in the Guaranteed Student Loan Program. Department of Education, Fact Sheet on Education Department Plans To Reduce Defaults in the Guaranteed Student Loan (GSL) Program (November 4, 1987). These regulations would require *pro rata* refunds, disclosure of graduation rates and substantiation of claims regarding job placement rates and starting salaries. *Id.* at 4. If these regulations are promulgated, they are likely to affect the practices of vocational schools, thereby undermining further the validity of any information gathered before their issuance.

4. In addition to the age of the record evidence and the likelihood of changes in the practices of vocational schools as a result of the anticipated Department of Education regulations, after further consideration, we have concluded that the evidence in this rulemaking record is inadequate substantively to support the rule. In a rulemaking proceeding, not only must the Commission conclude that the acts it proposes to regulate are unfair or deceptive, but to proceed by rulemaking rather than by case-by-case enforcement, we must decide that those acts are prevalent, that they cause significant harm, that the proposed rule would be likely to reduce the harm and that the benefits of the rule would exceed its costs. *See* Statement of Basis and Purpose for Credit Practices Rule, 49 FR 7740, 7742 (Mar. 1, 1984). The record in this proceeding fails to establish either a suitable premise for rulemaking or adequate support for the rule proposed.

For these reasons, the Commission hereby terminates the rulemaking proceeding.

By direction of the Commission, Commissioner Calvani concurring except as to paragraph 4.

Benjamin I. Berman,

Acting Secretary.

Dissenting Statement of Commissioner Strenio

July 20, 1988.

Reasonable people may differ on how the Vocational Schools Rulemaking ("rulemaking") should have been handled at any stage of its existence. Unfortunately, however, there is no comparable ambiguity regarding the conclusion that the history of this rulemaking since its initiation in 1974 constitutes a case study in institutional failure.

A basic chronology reveals the erratic nature of the process. Fourteen years and 38,720 staff hours ago, the FTC started this rulemaking.[1] Twelve years ago, it closed the record. Ten years ago, it issued a rule. Nine years ago, it received the rule back on remand from the Second Circuit for further proceedings. Between then and now, the agency neglected to proceed further to either a public revision of the rule or any other resolution. Finally, a majority today has terminated the rulemaking.

The majority advances three reasons in support of termination. First, the record is stale. Second, if the Department of Education promulgates new regulations, circumstances are likely to change and render the record less relevant still. Third, according to two commissioners, the record does not "establish either a suitable premise for rulemaking or adequate support for the rule proposed." (Commissioner Calvani does not join in this third assertion).

But these three explanations raise troubling and unaddressed questions. First, how could the Commission allow a rulemaking record to grow so stale as to become unuseable? Further, even if the record is stale, why not reopen it to gather new evidence rather than shut down the matter in its entirety? It does not follow that a stale (or inadequate) record necessarily means that serious, continuing consumer problems are absent from the industry.

Second, if prospective regulations from the Department of Education potentially are so significant, why not wait to see if they actually are issued, what their precise terms are, and whether they have the predicted effect? After years of inaction, a rush to judgment on the basis of what another agency might do seems inappropriate.

Third, why is it that the Department of Education in a relatively short time apparently has been able to amass a record that may support extensive regulation, while the FTC after fourteen years does not even have a "suitable premise for rulemaking"? After all, when the FTC issued its original rule ten years ago, it stated that the action was taken "to eliminate currently abusive practices against vocational and home study school students and prospective students." Have things changed for the better that much since 1978?

One expert thinks not. According to this expert, he has "extensive evidence" that many for-profit trade schools are abusing students. This expert sent a report to Congress on February 9, 1988. He described the contents of this report as follows: "You will find accounts of semiliterate high school dropouts lured to enroll in expensive training programs with false promises of lucrative jobs, only to have their hopes for a better future cruelly dashed. You will read of falsified scores on entrance exams, poor quality training and harsh refund policies."

Of course, the views of one expert seldom are conclusive when it comes to a rulemaking. But when that expert is Education Secretary William J. Bennett, an individual not widely considered to have an excessive preference for regulation, the FTC should be all the more cautious about abandoning its inquiries into behavior of the "bad apples" in this industry.

For the above reasons, I disagree with the result and the reasoning embraced by the majority (although my colleagues—none of whom have been at the agency for even five years—are entitled to credit for grappling with a matter that eluded the attention of many others). In my view, it would be preferable and prudent to at least await the outcome of the Department of Education's examination before closing the Commission's books permanently. Indeed, in light of recent events, reopening the record may well be warranted with an emphasis upon practices and segments of the industry that would not be covered by the proposed Department of Education regulations. Accordingly, I respectfully dissent.

[FR Doc. 88-17656 Filed 8-4-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Fourteen years is a long time to devote to a project only to come up empty. By comparison, it took this country less time to declare its independence, fight the Revolutionary War, realize the Articles of Confederation were insufficient, and write and ratify the Constitution.

POSTAL SERVICE

39 CFR Part 111

Exclusion of "Plus" Issues From Second-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: In anticipation of the possibility of the adoption of a temporary mail classification change concerning the eligibility of "Plus" issues for second-class mail privileges, the Postal Service is proposing an implementing regulation which, if adopted, would exclude from second-class mail those "Plus" issues distributed on a different day from any other issue of the parent publication.

DATE: Comments must be received on or before September 6, 1988.

ADDRESS: Written comments should be directed to the Director, Office of Classification and Rates Administration, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Leo Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. That request was filed because a decision in *Combined Communications v. USPS,* Civ. No. 3–87–0214 (M.D. TN May 27, 1988), brought into question the validity of the Postal Service's current regulation excluding certain "Plus" issues from second-class eligibility, Domestic Mail Manual section 425.226. The mail classification change requested by the Postal Service would amend § 200.0123 of the Domestic Mail Classification Schedule to read as follows:

For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if:

a. It is published at a regular frequency either on the same day as another regular issue of the same publication, or at such other frequency as prescribed by the Postal Service by regulation, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, or if no other issue that day, any other issue distributed at the same frequency, whichever is greater.

Such separate publications must independently meet the qualifications in § 200.0101 through 200.0109, or 200.0110.

Under the provisions of 39 U.S.C. 3641(e), the Postal Service may place this mail classification change into effect on a temporary basis if the Postal Rate Commission does not transmit a recommended decision to the Governors of the Postal Service within 90 days after the Postal Service submits the mail classification change request. In the event that the Postal Rate Commission does not transmit a recommended decision on this request and the Postal Service's Board of Governors authorizes the Postal Service to implement the change on a temporary basis, the Postal Service proposes to implement the change through the adoption of the following amendment to section 425 of the Domestic Mail Manual. This change would by regulation adopt a frequency of publication of more than once per month as a yardstick for "Plus" issues that, nominally, are not published on the same day as another issue of the same publication. Our experience with this matter has shown that such a yardstick does not reach legitimate second-class mail, and that "Plus" issue abuses are not present where publication frequency is once per month or less.

The proposed regulation would erase any legal question about the Postal Service's authority to require "Plus" issues to independently satisfy second-class eligibility requirements when they are published on a day other than another issue of the parent publication. For further information concerning such "Plus" issues, see generally the Postal Service's interim rule, 51 FR 25525 (July 15, 1986), and final rule, 51 FR 33610 (September 22, 1986), adopting current Domestic Mail Manual § 425.226.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendment of Parts 425 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation in 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 553(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATE.

2. In Part 425.2, add a new § 425.227 to read as follows:

425.2 Issues and editions.

* * * * *

425.22 Issues.

* * * * *

425.227 An "issue" of a newspaper or other periodical also will be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, when the following conditions exist:

a. The issue is published on a day different from a regular issue of the same publication, but more frequently than once each month, and

b. At least 10 percent of the total number of copies of the issue is distributed on a regular basis, to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other regular issue distributed to nonsubscribers or nonrequesters during the same period.

Note: See 441.121 and 444.1 for requirements for filing certification forms to establish eligibility of an issue under this section.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–17666 Filed 8–4–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3425-3]

National Oil and Hazardous Substances Contingency Plan; the National Priorities Lists

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Mowbray Engineering Company site from the National Priorities List (NPL) and requests public comment. The NPL is appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Mowbray Engineering Company site.

DATE: Comments concerning the site may be submitted on or before April 29, 1988.

ADDRESSES: Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, c/o John Trudell, Site Project Manager, 345 Courtland Street, NE, Atlanta, Georgia 30365. The Comprehensive information on this site is available through the EPA Regional Docket clerks.

Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is:

Gayle Alston, Region IV, USEPA Library, Room G–8, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404/347–4216.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, c/o John Trudell, Site Project Manager, 345 Courtland Street, NE, Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Mowbray Engineering site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses this site and explains how this site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7) on the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the Federal Register on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the Federal Register on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The comment period is being conducted at the local level concurrent with this notice. The following procedures are being used for the intended deletion of this site.

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.
2. EPA Regional Office is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.
3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete is made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register,** and the NPL will reflect any deletions in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

Mowbray Engineering Company Site, Greenville, Alabama

The Mowbray Engineering Company (MEC) Superfund Site is a swamp of approximately three acres located in Greenville, Butler County, Alabama. The swamp is bordered on the northeast by Beeland St., the southeast by First St., the southwest by Tanyard Branch, and the northwest by an empty lot.

MEC was in the business of repairing electrical transformers from the early 1940's to late 1986. MEC disposed of the waste transformer oil by dumping it onto the ground behind the plant. The oil flowed into a storm sewer then discharged into the swamp. Approximately 9,000 gallons of oil were dumped annually between 1955 and 1974.

After two (2) fish kills and a removal action in February 1981, the MEC site was ranked on the NPL in 1982 with a score of 53.67. In 1983, the Alabama Department of Environmental Management sampled and found one sample to contain 1,737 mg/kg PCB. In 1984, the EPA Field Investigation Team conducted a site inspection and sampling and found PCB levels similar to the 1981 levels prior to removal. In

1985, Camp, Dresser, & McKee was authorized to conduct a Remedial Investigation/Feasibility Study to determine the nature and extent of contamination at the site and to explore potential remedies. After the public meeting in August 1985, the RI was conducted and completed in November 1985. The combined RI/FS report was completed in July 1986 and presented to the public for comment on August 12, 1986 at the public meeting.

The ROD was signed on September 25, 1986 and the selected remedy included excavation of soils contaminated above 25ppm PCBs and either offsite incineration, onsite incineration, or onsite stabilization/solidification of these soils. Incineration was the preferred option, however, stabilization/solidification was chosen as the remedy due to cost effectiveness.

The Remedial Action commenced in June 1987 and consisted of the following: solidification/stablization of PCB contaminated soil; capping of the monolith; constructing a diversion ditch around the monolith; fencing of the swamp area; grading and revegetating the swamp area; closure of an abandoned city supply well; excavation, removal, and disposal of the underground storage tanks located on the MEC property; removal of abandoned transformers; and the disposal of waste oil in the swamp, the underground storage tanks, and the transformers. The cleanup ended on August 20, 1987.

Confirmatory sampling was conducted after each segment of the Remedial Action and confirmed cleanup to below the 25ppm goal. Core samples were taken of the monolith before closure and tested for leachate. Results indicated no detectable levels of PCBs. Of the remaining core samples taken of the monolith, half will be tested for leachate at the first anniversary of cleanup and the remaining at the fifth year of cleanup.

The operation and maintenance of the facility will include cutting the grass in the monolith area; monitoring the site for leachate, erosion, and burrowing animals; and backfilling if erosion occurs.

EPA, in consultation with the Alabama Department of Environmental Management, has determined that the appropriate fund-financed response under CERCLA at the Mowbray Engineering Company Site has been completed. The State has given their concurrence with the deletion of the MEC Site from the NPL. EPA retains the authority to spend money on a deleted site if future conditions warrant such actions.

Date: March 3, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-17707 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Office of Inspector General

42 CFR Parts 405, 410, 489, and 1003

[BERC-426-P]

Medicare Program; Prohibiting "Unbundling" of Hospital Outpatient Services

AGENCY: Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule, issued jointly by HCFA and OIG, would prohibit Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than the hospital, unless the services are furnished under an arrangement with the hospital. The hospital would be obligated by its provider agreement to furnish the services directly or under an arrangement.

These regulations would also authorize OIG to impose a civil money penalty, not to exceed $2,000, against any individual who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare in violation of an arrangement.

These regulations would implement sections 9343(c)(1), (c)(2), and (c)(3) of the Omnibus Budget Reconciliation Act of 1986.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 4, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-426-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-426-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer (HCFA) concerning Unbundling of Services (301) 966-4607

James Patton (OIG) concerning Civil Money Penalties (301) 965-9601.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rebundling of Hospital Services

The Social Security Amendments of 1965 (Pub. L. 89-97) established title XVIII of the Social Security Act (the Act), which authorized the establishment of the Medicare program to pay part of the costs of health care services furnished to eligible beneficiaries. Part A of the program (Hospital Insurance) provides basic health insurance protection against the costs of inpatient hospital care and other inpatient or home health care. Part B of the program (Supplementary Medical Insurance) provides voluntary supplementary insurance covering most physicians' services and certain other items and services not covered under Part A, including hospital outpatient services.

Prior to the enactment of the Social Security Amendments of 1983 (Pub. L. 98-21) on April 7, 1983, which established the Medicare prospective payment system for inpatient hospital services, nonphysician services provided to Medicare beneficiaries who were hospital patients were generally billed by the hospitals. However, under certain circumstances, the statute permitted payments to be made to an outside supplier or another provider for nonphysician services that were furnished to a hospital patient. When payments were made under these circumstances, some nonphysician services were billed as hospital services in one hospital and billed by an outside supplier in another. The practice of billing by suppliers outside the hospital for these services has been referred to in the legislative history as "unbundling" of hospital services.

Since the enactment of Pub. L. 98–21 and the publication of implementing regulations on September 1, 1983 (48 FR 39752), the Medicare program has required that nonphysician services furnished to hospital inpatients be covered and paid for under Medicare as hospital services. This practice of covering nonphysician services furnished to hospital inpatients by an outside supplier as hospital services is referred to as "rebundling". Under the prospective payment system for inpatient hospital services, a single uniform payment is made for a case based on the diagnosis-related group (DRG) to which the cases is assigned. Rebundling ensures that the DRG payments to all hospitals cover a comparable "bundle" of services related to the hospital stay.

Specifically, Pub. L. 98–21 added section 1862(a)(14) to the Act to prohibit payment for services (other than physicians' services) furnished to an inpatient of a hospital by an entity other than the hospital, unless the services are furnished under an arrangement (as defined in section 1861(w)(1) of the Act). (Section 1861(w)(1) of the Act specifies that the term "arrangements" is limited to arrangements under which receipt of payment by the hospital or other provider for Medicare covered services to an individual discharges the liability of the individual or any other person to pay for the services.) Pub. L. 98–21 also added section 1866(a)(1)(H) to the Act to provide that a hospital will be eligible to participate in the Medicare program only if the hospital agrees to furnish to inpatients either directly or under an arrangement all Medicare covered items and services, other than physicians' services.

Regardless of whether the hospital furnishes the services directly or arranges for their provision, the hospital assumes financial responsibility for the services. The Medicare program makes payment only to hospitals, and not to providers or suppliers that furnish inpatient services on behalf of the hospitals.

In Pub. L. 98–21, Congress addressed only nonphysician services provided to Medicare beneficiaries who are hospital *inpatients* and did not address at that time nonphysician services provided to Medicare beneficiaries who are hospital *outpatients*, for which payment is made on a cost basis under Part B of Medicare. Thus, services to hospital outpatients continued to be unbundled in some hospitals. Subsequently, in section 9343(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, enacted October 21, 1986), Congress extended the rebundling provision to all nonphysician services furnished to hospital *patients*, thus including nonphysician services provided to Medicare beneficiaries who are hospital outpatients.

Sections 9343(c)(1) and (c)(2) of Pub. L. 99–509 amended sections 1862(a)(14) and 1866(a)(1)(H) of the Act, respectively. As revised, section 1862(a)(14) of the Act prohibits payment for nonphysician services furnished to hospital patients (inpatients and outpatients), unless the services are furnished by the hospital, either directly or under an arrangement (as defined in section 1861(w)(1) of the Act). As revised, section 1866(a)(1)(H) of the Act requires each Medicare participating hospital to agree to furnish directly all covered nonphysician services required by its patients, or to have the services furnished under an arrangement (as defined in section 1861(w)(1) of the Act).

Another provision of Pub. L. 99–509 made changes that affect our implementation of the rebundling mandate. Section 9338(a)(3) of Pub. L. 99–509 amended section 1861(s)(2)(K) of the Act by permitting services of physician assistants to be covered and billed separately.

Rebundling of outpatient hospital services would provide a basis for developing a prospective payment methodology for outpatient hospital services. Section 9343(f) of Pub. L. 99–509 amended section 1135 of the Act to require the Secretary to submit an interim report to Congress by April 1, 1988 concerning development of a fully prospective payment system for ambulatory surgery. A final report is due to Congress no later than April 1, 1989, with recommendations concerning implementation of a fully prospective payment mechanism for ambulatory surgery services by October 1, 1989. We are also required to develop a model system for prospective payment of outpatient hospital services other than ambulatory surgical procedures and submit a report to Congress concerning the model system by January 1, 1991.

So that we may be able to develop a prospective payment system for ambulatory surgery and other hospital outpatient services, it is necessary to have available clear and consistent rules about the range of services that would be included in such a payment system. Current policies on coverage of hospital outpatient services permit these services to be unbundled, and thus allow providers to vary their practices concerning provision of services. Congress recognized the inconsistencies of the current payment system and required rebundling as a first step toward payment reform.

B. OIG Civil Money Penalty Authority

The Department's OIG is authorized under sections 1128(c) and 1128A of the Act, and through implementing regulations at 42 CFR Part 1003, to impose administratively civil money penalties, assessments, and suspensions against any person who files false or certain other improper claims under Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs. Under this authority, the OIG, in certain situations, may fine violators up to $2,000 as a penalty for each false or improper item or service, and impose an additional assessment of up to twice the amounts falsely claimed for each item or service. In addition, a person found liable for a penalty may also be suspended from Medicare or Medicaid program participation for appropriate periods of time.

In order to deter the unbundling of nonphysician hospital outpatient services, sections 9343(c)(3) of Pub. L. 99–509 and 4085(i)(17) of Pub. L. 100–203 further amended section 1866 of the Act. Specifically, this authority provides for the imposition of a penalty, not to exceed $2,000, against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare that violates the billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement. While the statute requires that a penalty be imposed in the same manner as other penalty billing violations currently imposed under section 1128A of the Act, it does not provide for assessments or for suspensions based on a penalty determination.

II. Provisions of the Proposed Regulations

A. Rebundling of Hospital Outpatient Services

Current Medicare regulations (42 CFR 405.310(m)) implement the statutory requirement for rebundling of inpatient hospital services by excluding from coverage nonphysician services furnished to hospital inpatients by an entity other than the hospital, unless the services are furnished under arrangement. The current exclusion from coverage does not apply to physicians' services that meet the conditions for payment in 42 CFR 405.550(b), or services of anesthetists employed by physicians that meet the conditions for payment in 42 CFR 405.553(b)(4). The

exception for physicians' services is required by section 1862(a)(14) of the Act. Services of physician-employed anesthetists were excepted from rebundling as an administrative measure to prevent disruption of long-standing physician-anesthesia team relationships.

HCFA would implement the requirement for rebundling of outpatient hospital services by amending Medicare regulations (42 CFR 405.310 and Part 410) to exclude from coverage also any services that are furnished in a hospital to a patient who is not currently an inpatient of a hospital but is registered by the hospital as an outpatient, by an entity other than the hospital during or as a result of an encounter in the hospital, unless the services are furnished under arrangement. In addition, HCFA would require rebundling of those diagnostic procedures or tests (for example, magnetic resonance imaging (MRI) procedures) that are furnished outside the hospital by an entity other than the hospital, but were ordered during an encounter in the hospital with the patient or as a result of such encounter.

As in the case of services to hospital inpatients, and for the same reason, physicians' services that meet the conditions for payment in 42 CFR 405.550(b) would not be subject to rebundling under these proposed regulations. HCFA also would except services of physician-employed anesthetists that meet the conditions for payment in 42 CFR 405.553(b)(4) from outpatient rebundling. In addition, the proposed regulations would not apply to physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act from inpatient and outpatient rebundling. This change is being proposed to help accomplish the objective of section 1861(s)(2)(K)(i) of the Act, as amended by section 9338(a)(3) of Pub. L. 99–509, which permits physician assistants' services to be covered and billed separately. We believe section 1861(s)(2)(K) of the Act was intended to establish an exception to the rebundling provisions of Pub. L. 99–509 as they apply to services of physicians' assistants in hospitals. Although this exception is not explicit, to read the statute in any other way would mean that section 1861(s)(2)(K) of the Act would have no meaning with respect to services to hospital patients, a result that is contrary to the normal rule of statutory construction that each provision of an enactment must be construed to have meaning. In addition, the language of section 1861(s)(2)(K) of the Act describes the services affected as those "which *would be* physicians' services if furnished by a physician * * *" (emphasis added). We believe this language places the services in the same generic category as physicians' services, and suggests that they should be treated similarly for rebundling purposes.

HCFA would define (in Medicare regulations at § 410.2) the term "encounter" as a direct personal contact beween a patient and a physician, or other person who is authorized by State licensure law and, where applicable, by hospital staff bylaws to order or provide services for the patient, for the purpose of diagnosis or treatment of the patient. The use of the "encounter" as a basis for identifying the services to be rebundled is not specifically required by Pub. L. 99–509, but is needed in order to implement the rebundling requirement in a uniform and equitable manner, as explained further in section III of this preamble.

To ensure that appropriate payment is made for physicians' services and for the rebundling hospital and other nonphysician services, HCFA would revise the regulations relating to Part B reasonable charge payment (42 CFR 405.555 (b) and (c) and 405.556(c)).

HCFA would also revise Medicare regulations that set forth the basic commitments included in the provider agreement (§ 489.20). The revised regulations would clarify the hospital's responsibilities with respect to services furnished to inpatients, and would require a hospital that furnishes services to a beneficiary who is not currently an inpatient of a hospital but is registered by the hospital as an outpatient to agree to either furnish directly or make arrangements (in accordance with section 1861(w)(1) of the Act) for all items and services for which rebundling is required under the proposed revision described above, and for which the beneficiary is entitled to have payment made under Medicare.

Under the new provisions, if a Medicare outpatient is referred to another provider or supplier for further diagnostic testing or other diagnostic services as a result of an encounter that occurs in the hospital, the hospital would be responsible for arranging with the other entity for the provision of the services.

The hospital also would be responsible for providing or arranging for the provision of prostheses and prosthetic devices (other than dental) that replace all or part of an internal body organ (for example, intraocular lenses (IOLs)) and are implanted or fitted during an encounter. For example, under current policies, the physician who implants an IOL during surgery conducted on an outatient of a hospital also can be the supplier of the IOL, and is allowed to bill Medicare under Part B for it. Under these proposed regulations, this practice would be prohibited and the hospital would have to furnish the IOL, either directly or under arrangement (that is, would have to pay for the lens). The same policies would apply to other items and services, such as, artificial limbs, knees, and hips; durable medical equipment (DME); equipment and supplies covered under the prosthetic device benefit; and services incident to physicians' services. Thus, hospitals would be required to assume financial liability for prostheses and prosthetic devices (which are regarded as "services" for Medicare coverage purposes) and for other services furnished by an outside entity to their outpatients, and the practice of unbundling these services would be prohibited.

Sometimes a hospital may furnish an item or service for which a patient will have a continued need. For example, a hospital may furnish a DME item (for example, a wheel chair), or a prosthetic device and supplies (for example, a nasogastric tube and associated supplies). When this situation occurs, the hospital would be responsible under this regulation for rebundling the items and services it furnishes on site. DME is typically paid for on a monthly basis or in a lump sum, and if it is furnished by a hospital to an outpatient, we would require only the initial charge to be rebundled. Similarly, if a hospital furnishes a nasogastric tube and associated supplies, we would require only the items actually furnished to be rebundled. In both of these examples, subsequent charges for equipment rental or supplies would be billed and considered separately. A patient could continue to purchase them from the hospital or deal with an outside supplier.

In view of the short amount of time available for implementing the statutory requirements of Pub. L. 99–509, HCFA issued interim instructions in the Provider Reimbursement Manual (HCFA Pub. 15–1) and is preparing interim instructions for other HCFA manuals. These instructions were effective for services furnished on or after July 1, 1987. Upon the publication of final regulations that implement section 9343(c) of Pub. L. 99–509, HCFA will revise its program instructions as needed to reflect any differences between those final regulations and the interim instructions.

B. Civil Money Penalty for Unbundling Hospital Outpatient Services

In order to implement sections 9343(c)(3) of Pub. L. 99–509 and 4085(i)(17) of Pub. L. 100–203, OIG would impose a penalty, not to exceed $2,000, against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare, and that bill or request violates the billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement.

Upon issuance of the final rule, HCFA would refer all cases for possible penalty action to the OIG. The method for making referrals to the OIG would be set forth separately in the Part A Intermediary Manual, Part 3 (HCFA Pub. 13–3).

III. Alternatives Considered

The extension of the rebundling provision to outpatient services creates a number of practical difficulties that do not exist in the case of inpatient services. Because an individual inpatient's admission and discharge dates are entered in the hospital's medical and billing records, the time period during which the patient is an inpatient can be readily determined. In addition, an individual's access to treatment by other providers or suppliers is inherently limited while he or she is a hospital inpatient. By contrast, one individual may receive treatment on an outpatient basis from two or more hospitals in the same day, and the services received will not necessarily have been ordered by the same physician, or related to the same medical condition. It is also not uncommon for a patient who is seen in a hospital's outpatient department to be referred to another provider or supplier for additional services or specialized testing. Under these circumstances, determining which services should be rebundled can be difficult.

To deal with these problems, HCFA considered rebundling only those services that are not furnished by the hospital directly but are furnished while the patient is on site at the hospital. However, this approach would not adequately account for certain services (for example, computerized tomography (CT) scans or MRI procedures available only at and performed by a source outside the hospital) that may be provided as the direct result of a hospital outpatient visit and may be integrally related to other services, such as a physical examination, provided during the visit. Therefore, HCFA did not adopt this approach.

HCFA also considered rebundling all services, whether or not furnished on site at the hospital, that are required for the diagnosis and treatment of the medical condition for which the patient sought outpatient care from the hospital. Since the same individual may simultaneously be undergoing different courses of treatment for two or more unrelated medical conditions, and may receive services on an ambulatory basis from several providers or suppliers for each condition, making decisions as to which services are related to each condition could present almost insurmountable administrative problems for hospitals, intermediaries, and carriers. HCFA does not now have the information that would be needed to provide reliable guidance to carriers and intermediaries on which services typically are required for treatment of each condition for which an individual may seek outpatient hospital care. Because of these difficulties, HCFA rejected this approach.

To implement the rebundling requirement of section 9343(c) of Pub. L. 99–509 while avoiding the difficulties of the two approaches described above, HCFA proposes to use the site of the encounter that resulted in services being ordered as the key determinant of whether the services must be rebundled. For services provided on site at the hospital to patients who are not currently inpatients of a hospital, but are registered by the hospital as outpatients, rebundling would be required if the services were ordered during or as a result of an encounter that occurred at the hospital. For services provided outside the hospital to such patients, rebundling would be required only if the services are diagnostic procedures or tests ordered during or as a result of an encounter at the hospital. We adopted this "encounter-based" approach to rebundling because we believe it would prevent the unbundling of services that are integrally related to diagnosis or treatment the hospital provides to its patients, and would provide a clinically meaningful and administratively feasible basis for grouping outpatient services for purposes of eventual development of a prospective payment system for them.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any rule that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (FRA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we treat all hospitals and suppliers of medical services as small entities.

Because it appears likely that this rule would result in a significant increase in costs for at least some hospitals, we have prepared the following regulatory flexibility analysis. However, we do not believe that the effects of this proposed rule, in and of itself, would meet the criteria for a major rule.

We do not have sufficient data to assess fully the magnitude, interaction, and effects of this proposed rule on hospital and supplier behavior. However, we expect the following would result from implementation of this proposed rule.

Some items and services for which Part B payment is now made directly to the supplier would be paid for only if furnished directly by the hospital or under arrangements. All payments for those services to be rebundled would be made to the hospital. Payments for some services to outpatients that are currently paid on a reasonable charge basis would be made to the hospital on a reasonable cost basis. To the extent that a hospital's costs increase due to the rebundling of services, the hospital would be able to claim reimbursement on a reasonable cost basis for the increased costs. Therefore, we do not expect hospitals to incur an increase in unreimbursable costs.

We intend to implement this rule in a manner requiring the least change in billing. There has been some concern that burdensome administrative measures would be needed to avoid duplicate payment, or payment for services that are billed in violation of the rebundling provisions. While we expect some administrative costs due to necessary audits to monitor rebundling of services, we also expect that once participating hospitals and suppliers have gained the experience to make appropriate changes to their billing practices, that duplicate payments or noncompliance problems would not

occur more frequently than under current regulations with respect to inpatient services.

We have identified no benefits for hospitals or suppliers resulting directly from this proposal. Hospitals may elect to furnish directly some items and services now furnished by other entities, rather than enter into arrangements. This may affect the market position of non-hospital suppliers. We believe that the most frequently affected services would be laboratory tests, X-ray, CT, MRI, and IOLs.

Beneficiaries should be benefited by coordinated billing for nonphysician outpatient services. Coinsurance liability would be affected only to the extent that rebundling of services results in aggregate charges different from total charges for unbundled services. Beneficiary out-of-pocket expenses, however, may be reduced, since they would not be billed as often for charges in excess of the Medicare reasonable charge. We plan to apply the "prudent buyer" concept, under which costs in excess of those that would be incurred by a prudent and cost-conscious buyer are not considered reasonable, to ensure that rebundling does not unnecessarily increase the costs of services furnished under arrangements to outpatients. For example, if a hospital purchases IOLs from a physician or other supplier rather than directly from a manufacturer, the cost recognized as reasonable would not, in the absence of extenuating circumstances, be allowed to exceed the cost of purchasing directly from the manufacturer. Thus, we do not expect program liability for services to increase because of rebundling.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

VI. Information Collection Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Archives and records, grant programs—social programs, Maternal and child health, Medicaid, Medicare, Penalties.

I. For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, Subpart C is amended as follows:

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

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

2. In § 405.310, the introductory text to the section is republished, paragraph (m)(2) is revised, and a new paragraph (m)(3) and paragraph (n) are added to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(m) *Services to hospital inpatients*—

(1) * * *

(2) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis.

(ii) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act.

(iii) Services of an anesthetist employed by a physician if the services are furnished—

(A) During a cost reporting period that began on or after October 1, 1984; and

(B) No later than December 31, 1988.

(3) *Scope of exclusion.* Services subject to exclusion under this paragraph (m) may include, but are not limited to—clinical laboratory services; pacemakers and other prostheses and prosthetic devices (other than dental) which replace all or part of an internal body organ (for example, intraocular lenses); artificial limbs, knees, and hips; durable medical equipment; equipment and supplies covered under the prosthetic device benefits; and services incident to physicians' services.

(n) *Services to hospital outpatients.*—(1) *Definitions.* As used in this paragraph—

"Encounter" means a direct personal contact in the hospital between an outpatient and a physician or another person who is authorized by State law and, if applicable, by hospital staff by-laws, to order or furnish services for diagnosis or treatment of the patient.

"Outpatient" means an individual who is not an inpatient of the hospital but is registered as an outpatient.

(2) *Basic rule.* Except as provided in paragraph (n)(3) of this section, any of the following services if furnished by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) to furnish that particular service to the hospital's outpatients:

(i) All services furnished in the hospital during or as a result of an encounter.

(ii) Diagnostic services furnished outside the hospital, but ordered during or as a result of an encounter.

(3) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis.

(ii) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act.

(iii) Services of an anesthetist employed by a physician if the services are furnished—

(A) During a cost reporting period that began on or after October 4, 1984; and

(B) No later than December 31, 1988.

(4) *Scope of exclusion.* Services subject to exclusion under this paragraph (n) may include, but are not limited to—clinical laboratory services;

pacemakers and other prostheses and prosthetic devices (other than dental) which replace all or part of an internal body organ (for example, intraocular lenses); artificial limbs, knees, and hips; durable medical equipment; equipment and supplies covered under the prosthetic device benefits; and services incident to physicians' services.

B. Part 405, Subpart E is amended as follows:

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

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

2. In § 405.553, paragraphs (b)(1)(ii) and (4) are revised to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

* * * * *

(b) *Services furnished by the anesthesiologist or by an anesthetist employed by the anesthesiologist.* * * *

(1) * * *

(ii) Except as provided in paragraph (b)(4) of this section, anesthesia services furnished to a hospital patient by an anesthetist under the medical direction of an anesthesiologist will be paid for in accordance with paragraph (c) of this section.

* * * * *

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to services furnished by an anesthetist employed by a physician if either of the following conditions is met:

(i) The services are inpatient hospital services furnished—

(A) During cost reporting periods that begin on or after October 1, 1984; and

(B) No later than December 31, 1988.

(ii) The services are outpatient hospital services furnished—

(A) During cost reporting periods that begin on or after [the effective date of the final regulation]; and

(B) No later than December 31, 1988.

* * * * *

3. § 405.555 is revised to read as follows:

§ 405.555 Reasonable charges for radiology services.

(a) *General rule.* In determining payment for physicians' radiology services that meet the conditions for payment of charges in § 405.554, the carrier—

(1) Determines the amount of payment under the reasonable charge rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508; and

(2) Applies the rules in paragraphs (b) or (c) as appropriate.

(b) *Services subject to the 40 percent limitation.* The reasonable charge determined under paragraph (a) of this section, for physicians' radiology services furnished to a provider patient, may not exceed 40 percent of the prevailing charge for similar services furnished in any setting other than a provider. These services include physicians' radiology services—

(1) Furnished in any setting to a hospital inpatient;

(2) Furnished in a provider to a provider patient; or

(3) Associated with diagnostic radiology services furnished outside the hospital but ordered during or as a result of an encounter, as defined in § 405.310(n).

(c) *Services not subject to the 40 percent limitation.* The following services are not subject to the 40 percent limitation set forth in paragraph (b) of this section:

(1) Physician radiology services associated with services, other than those described in paragraph (b)(3) of this section, furnished to a hospital outpatient by an entity outside and other than the hospital.

(2) Physician radiology services furnished to a patient of a provider, other than a hospital patient, by an entity outside and other than the provider.

4. § 405.556 is amended by revising paragraph (c) to read as follows:

§ 405.556 Conditions for payment of charges: Physician laboratory services.

* * * * *

(c) *Independent laboratory services furnished to hospital patients.* Laboratory services furnished to a hospital patient by an independent laboratory (as defined in § 405.1310(a)) are paid for on a reasonable charge basis under this subpart only if they are anatomical pathology services furnished by a physician. Physician services associated with abnormal pap smears or abnormal blood smears furnished to other than hospital inpatients are paid under and as part of the clinical laboratory fee schedule payment. For nonphysician services furnished by an independent laboratory, the intermediary pays the hospital in accordance with—

(1) Part 412 of this chapter for services to inpatients; and

(2) Part 413 of this chapter for services ordered during or as a result of an encounter (as defined in § 405.310(n)(1)), and furnished to outpatients.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

C. Part 410, Subpart A is amended as follows:

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x(r), (s), and (cc), 1395hh, and 1395rr).

Subpart A—General Provisions

2. Section 410.2 is amended by adding in alphabetical order the definition of "Encounter" to read as follows:

§ 410.2 Definitions.

* * * * *

"Encounter" means a direct personal contact between a patient and a physician (or other person who is authorized by State licensure law and, where applicable, by hospital staff bylaws to order or provide services for the patient) for the purpose of diagnosis or treatment of the patient.

* * * * *

Subpart B—Medical and Other Health Services

3. Section 410.27 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.

* * * * *

(c) Services furnished by an entity other than the hospital are subject to the limitations specified in § 410.30(a).

* * * * *

4. Sections 410.28 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 410.28 Hospital diagnostic services furnished to outpatients: Conditions.

* * * * *

(c) Diagnostic services furnished by an entity other than the hospital are subject to the limitations specified in § 410.30(b).

* * * * *

5. A new § 410.30 is added to read as follows:

§ 410.30 Limitations on coverage of certain services furnished to hospital outpatients.

(a) Except as provided in paragraph (c) of this section, Medicare Part B does not pay for any services that are furnished—

(1) In a hospital by an entity other than the hospital unless furnished under an arrangement as defined in § 409.3 of this chapter;

(2) To an individual who is not an inpatient of the hospital, but is registered by the hospital as an outpatient; and

(3) During or as a result of an encounter (as defined n § 410.2) in the hospital with the patient.

(b) Except as provided in paragraph (c) of this section, Medicare Part B does not pay for any diagnostic services if the services are—

(1) Furnished outside the hospital by an entity other than the hospital unless furnished under an arrangement as defined in § 409.3 of this chapter; and

(2) Ordered during or as a result of an encounter (as defined in § 410.2) in the hospital with an individual who is not an inpatient of the hospital but is registered by the hospital as an outpatient.

(c) The limitations stated in paragraphs (a) and (b) of this section do not apply to—

(1) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment in a reasonable charge basis;

(2) Physician assistant services as defined in section 1861(s)(2)(K) of the Act; and

(3) Services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4) of this chapter.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

D. Part 489, Subpart B is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(h), 1395aa, 1395cc, and 1395hh), and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

2. In § 489.20, the introductory statement is republished and paragraph (d) is revised to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(d) In the case of a hospital that furnishes services to Medicare beneficiaries, either to furnish directly or to make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services to hospital inpatients and outpatients except the following:

(1) Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis;

(2) Physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act;

(3) Services of an anesthetist employed by a physician if the services meet the conditions set forth in § 405.553(b) of this chapter; and

* * * * *

II. For the reasons set forth in the preamble, 42 CFR Chapter V would be amended as follows:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

A. Part 1003 is amended as follows:

1. The authority citation for Part 1003 continues to read as follows:

Authority: Secs. 1102, 1128, 1128a, 1842(j), and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j), and 1395u(k)).

2. Section 1003.101 is amended by adding definitions for the terms "Encounter", "Hospital outpatient service", and "Outpatient" to read as follows:

§ 1003.101 Definitions.

* * * * *

"Encounter" means a direct personal contact between an outpatient and a physician or another person who is authorized by State law and, if applicable, by hospital staff by-laws, to order or furnish services for the purpose of diagnosis or treatment of the patient.

* * * * *

"Hospital outpatient service" means—

(a) A service furnished to an outpatient in a hospital during or as a result of an encounter; or

(b) A diagnostic procedure or test furnished to an outpatient outside the hospital but ordered during or as a result of an encounter.

* * * * *

"Outpatient" means an individual who is not an inpatient of the hospital but is registered as an outpatient.

* * * * *

3. In § 1003.102(b), the introductory text of paragraph (b) is republished, and the paragraph is amended by removing the "; or" at the end of paragraph (b)(1)(iii) and inserting in their place ".", and adding a new paragraph (b)(4) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part:

* * * * *

(4) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for a hospital outpatient service for which payment may be made under Part B of the Medicare program, if that bill or request violates a billing arrangement under section 1866(a)(1)(H) of the Act, or the requirement for an arrangement.

4. § 1003.105, paragraph (a) is revised to read as follows:

§ 1003.105 Suspension from participation in Medicare or Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b)(1) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the Secretary to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The Secretary will notify the State agency if and when the Secretary waives suspension in response to such a request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 2, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Dated: March 25, 1988.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: June 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–17539 Filed 8–4–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 88-341; FCC 88-211]

Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 36 of its rules, which establish eligibility criteria for the Link Up connection assistance program, to provide that states which verify income need not require that Link Up applicants comply with the requirements that applicant have lived at an address without telephone service for the past three months and not have received Link Up assistance during the past two years. The FCC found that reexamination of the eligibility criteria is warranted because participation in four test markets indicates that 15% of Link Up applicants have been rejected for failure to meet the three-month rule, and thus that the eligibility criteria may frustrate efforts to promote universal service.

DATES: Comments must be submitted on or before August 15, 1988, and reply comments must be submitted on or before September 12, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peyton Wynns at (202) 632-0745 or E. Laurence Povich at (202) 632-6363, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this NPRM may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 36

Jurisdictional separations procedures; standard procedures for separating telephone property costs, revenues, expenses, taxes and reserves, telephone.

H. Walker Feaster III,
Acting Secretary.

Proposed Rule Changes

Part 36 of Title 47 CFR is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority for Part 36 continues to read as follows:

Authority: Sections 4, 201, 202, 203, 205, 218, 221(c), 403, and 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 221(c), 403, and 410(c).

2. Section 36.721 is proposed to be amended by revising the introductory text of paragraph (a)(2); the texts of (a)(2)(ii) and (a)(2)(iii); by adding a new paragraph (a)(2)(iv); and by revising paragraph (a)(3) and removing (a)(4), to read as follows:

§ 36.721. Telephone company eligibility for lifeline connection assistance expense allocation.

(a) * * *

(2) Shall verify that subscribers meet the eligiblity criteria set out in § 36.711(b) provided that:

* * * * *

(ii) If the eligibility criterion in § 36.711(b)(4) is verified, then the criteria in § 36.711(b) (1) and (2) shall not apply;

(iii) If the eligibility criterion in § 36.711(b)(4) is self-certified, then the eligibility criteria in § 36.711(b) (1) and (2) shall apply and must be verified;

(iv) In all cases, the eligibility criterion in § 36.711(b)(3) may be self-certified.

(3) Shall file information with the Commission Secretary demonstrating that it is eligibile for the additional interstate expense adjustment.

* * * * *

[FR Doc. 88-17685 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-589; RM-6108]

Radio Broadcasting Services; Creswell, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; denial of petition.

SUMMARY: The Commission denies the request of Visionary Radio Euphonics of Oregon, Inc., (published at 53 FR 1388, Jan. 19, 1988) to substitute Channel 237C2 for Channel 237A at Creswell, Oregon, and modify its license for Station KZAM to specify the higher powered channel. The Commission found that Channel 237C2 could not be allotted to Creswell in compliance with the Commission's technical requirements. Rather, it was found that Station KZAM could not provide the entire community with the required 70 dBu city grade service due to an obstruction approximately 120 meters in height between the restricted transmitter site and the community of license which could cause shadowing to the western side of Creswell. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-589, adopted July 1, 1988, and released July 29, 1988. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-17680 Filed 8-4-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 83-523; FCC 88-239]

Amendment of Rules for Instructional Television Fixed Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rules.

SUMMARY: This action proposes further modification of certain rules in the Instructional Television Fixed Service ("ITFS") in response to a partial remand by the U.S. Court of Appeals, DC Circuit in *TRAC v. FCC*, 836 F.2d 1349 (1988). The Court rejected the Commission's use of an unweighted lottery to break ties among competing applicants for mutually exclusive ITFS facilities. It also required the Commission to make a basic classification determination, or explain why it should not have to at this time, for ITFS operators which use their

"excess capacity" for non-ITFS nonsubscription services.

DATES: Comments must be submitted on or before September 22, 1988, and reply comments on or before October 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, (202) 632–9356.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Second Further Notice of Proposed Rulemaking in MM Docket No. 83–523, FCC 88–239, Adopted July 13, 1988, and Released July 22, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order and Further Notice of Proposed Rulemaking in MM Docket No. 83–523:

1. In this *Order and Second Further Notice of Proposed Rulemaking ("Order and Notice")*, the Commission is proposing the modification of rules governing the Instructional Television Fixed Service ("ITFS"). This action is in response to the rejection by the U.S. Court of Appeals, D.C. Circuit, of two aspects of the ITFS rules in *Telecommunications Research and Action Center ("TRAC v. FCC")*, 836 F.2d 1349 (D.C. Cir., 1988).

2. First, the Court noted that the Commission had not addressed the possibility that an ITFS operator's "excess capacity" could be utilized on a nonsubscription basis, and rejected its argument on appeal that such use is extremely unlikely, and that if it occured, it could be addressed when brought to the Commission's attention. The Commission now proposes to permit "excess capacity" use for non-ITFS purposes on a nonsubscription basis only after notification to and approval by the Commission of such use. This proscription will take effect immediately. Because this notification requirement is procedural in nature, it is imposed without prior notice and comment rulemaking.

3. The Court also rejected the Commission's use of an unweighted random chance tiebreaker in its comparative selection procedure. The Commission now proposes to eliminate or reduce ties after the application of its specified criteria by consideration of an additional criterion, to be used only in tied cases. That criterion will be some formula which measures the extent of use the applicants can make of the ITFS facilities based on the number of enrolled students they will serve. Total enrollment or some variation of student/hours of video classes are both possible, with the Commission intially favoring the former. Interested parties are requested to comment on the efficacy of various enrollment or usage factors and the propriety of any formula for comparing enrollment or usage figures, including the method of documentation or demonstration and the ease and reliability of methods of proof. Suggestions are solicited for additional criteria or procedures to employ for those cases, if any, which might remain tied even after application of the additional secondary enrollment criterion. The basic comparative slection process and the current criteria and their relative weights are not under consideration here; comments should be limited to the appropriate nature and formulation of the secondary criterion (or criteria) to be adopted.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, it is certified that the proposed will not, if promulgated, have a significant economic impact on a substantial number of small entities because submission of additional data will occur on occasionally, and ease and simplicity of ascertainment, assembly and submission is an essential element of any rule which the Commission will adopt.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and it may impose new or modified requirements or burdens on the public. Implementation of any new or modified requirements or burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. This is a restricted notice and comment rulemaking proceeding. *See* section 1.1229 of the Commission's rules, 47 CFR 1.1229, for rules regarding permissible *ex parte* contacts.

7. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 22, 1988, and reply comments on or before October 12, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clauses

8. Accordingly, it is ordered, that the Motion for Stay filed by NAACP and others is dismissed.

9. It is further ordered, That the Office of the Managing Director SHALL SEND to the Chief Counsel for Advocacy of the Small Business Administration the certification that the proposed action will have no significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 74

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services, Television.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–17686 Filed 8–4–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Part 927

Acquisition Regulation, Patent, Data and Copyrights

AGENCY: Department of Energy.

ACTION: Proposed amendment with request for comment.

SUMMARY: Pursuant to Section 3135 of Pub. L. 100–180, the Department of Energy proposes amendments to 48 CFR Part 927 to specify the elements of a "complete request" for waiver of Government patent rights to inventions and discoveries under contracts or subcontracts of the Naval Nuclear Propulsion Program or nuclear weapons programs or other atomic energy defense activities of DOE. A decision upon such a "complete request" is required within 150 days after the date of submission. The 150 day time period for action on such waivers is to apply to waiver requests submitted after March 1, 1988.

DATES: Written comments on the proposed amendment are due no later than September 23, 1988.

A Public Hearing will be held on September 14, 1988 at 9:00 a.m., at DOE Headquarters, 1000 Independence Avenue SW, Washington, DC, in Room GE–063. Requests to present oral statements must be received no later than August 29, 1988.

ADDRESSES: Written comments (three copies) must be addressed to: Robert M. Webb, Department of Energy, Procurement and Assistance

Management, Office of Policy, MA–421, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For further information and to make requests to speak at the public hearing contact: Richard E. Constant, Assistant General Counsel for Patents, Department of Energy, GC–42, Washington, DC 20585; Tel.: (202) 586–2802.

Robert M. Webb, Department of Energy, Procurement and Assistance Management, Office of Policy, MA–421, Washington, DC 20585; Tel.: (202) 586–8247.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (title I of division C of Pub. L. 99–661) 42 U.S.C. 7261a, (hereinafter "Authorization Act of 1987"), provided that for certain inventions made under contracts and subcontracts of DOE's Naval Nuclear Propulsion Program or DOE's nuclear weapons programs or other atomic energy defense activities, when making patent waiver decisions thereon, the Secretary of Energy shall consider matters additional to those previously provided by statute [section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or subsections (c) and (d) of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908)] for waiver of patent rights. These additional matters to be considered for waiver of title to inventions relating to such Naval Nuclear Propulsion and atomic energy defense activities include, whether national security will be compromised, whether sensitive technical information under these activities for which dissemination is controlled will be released to unauthorized persons, whether an organizational conflict of interest will result and whether these programs will be adversely affected by a patent waiver.

Section 3135 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1988 (title I of division C of Pub. L. 100–180) (hereinafter "Authorization Act of 1988") amended section 3131(a) of the Authorization Act of 1987 by, among other things, providing that for inventions relating to such Naval Nuclear Propulsion and atomic energy defense activities, waiver decisions shall be made within 150 days after the date on which a "complete request" for waiver of such rights has been submitted to the Secretary by the contractor (or assistance recipient or party entering into another arrangement, as applicable). If such waiver decisions are not made within the prescribed 150 day period, DOE is required to submit reports to appropriate Senate and House committees on the reasons for such failure to decide. It is further provided that a "complete request" includes such information, in such detail and form, as the Secretary of Energy by regulation prescribes as necessary to allow the Secretary to take into consideration the matters prescribed for waiver determinations.

The purpose of this rule is to amend DOE's regulations concerning patent waivers to include specific elements of a "complete request" for waiver, for purposes of the initiation of the 150-day period during which a waiver determination must be made for inventions relating to Naval Nuclear Propulsion or atomic energy defense activities. DOE's current regulation concerning patent waivers, 48 CFR 927.3, which incorporates 41 CFR 9–9.1 and in particular 41 CFR 9–9.109–6, addresses generally the information required in a waiver request, but does not specify as such the contents of a "complete request." Since no firm time periods had been prescribed for waiver determinations, DOE had flexibility to accept "incomplete" waiver petitions and as necessary request supplementary information when and if available. This procedure sometimes resulted in lengthy periods of time for making patent waiver determinations. In view of the new statutory requirement that certain waiver determinations be made within a prescribed time period after submission of a complete request, as prescribed by regulation, this amendment is necessary in order to prescribe the contents of a complete request. For waiver requests subject to the 150 day time period for decision, the 150 day time period commences on the date of receipt of the waiver petition, if the petition does not result in a communication from DOE Patent Counsel indicating that the request is incomplete. For advance waiver requests however, if petitioner is not notified that the request is incomplete, the 150 day period commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later. The reason for this provision is that for advance waivers, until contract terms are actually negotiated, e.g. level of cost-sharing technical data provisions, licensing of background and subject inventions, it is generally not possible for the waiver request to rise to the level of sufficient completeness for the Department to apply all of the matters to be considered under section 3131 of the Authorization Act of 1987.

In addition to specifying particular information to be included in a complete request for purposes of implementing the Authorization Act of 1988, this amendment formally includes the specific additional matters discussed above that are required to be considered for waivers of inventions made under contracts relating to Naval Nuclear Propulsion or nuclear weapons programs or other atomic energy defense activities of DOE. These additional matters are listed in proposed 927.301(b)(3)–(6).

Generally, a complete request for waiver is to include sufficient information in such detail and form as to allow the Secretary or designee to fully consider all statutory patent waiver objectives and considerations relevant to a particular situation. DOE's current patent waiver regulation specifies such objectives and considerations, and specifies generally the information to be included in a patent waiver request. In view of the statutory requirement discussed above to prescribe a complete request for waiver, this proposed amendment augments DOE's current regulations concerning patent waivers to provide additional specific guidance as to that which is required to constitute a complete waiver request. As discussed more fully in the proposed regulation, this information includes, for an advance waiver request, at a minimum, identification of all of petitioner's contractual arrangements involving the Government relative to the particular technology, and any other Government funding of the technology of which the petitioner is aware; a description of petitioner's past, present and future investment in the technology; information relative to whether the technology may be classified or sensitive; and information as to a possible organizational conflict of interest if petitioner has or intends to be providing program planning advice in the same general technology.

For identified invention waiver requests, the specific minimum information concerning the technical steps required and funds necessary therefor to develop the invention to commercialization; a description of petitioner's plans, intentions, and ability to commercialize the invention; a description of any continuing Government funding of the invention; information regarding reimbursement of Government's costs, if any, for preparation and prosecution of a patent

application; and information regarding existence of classified or sensitive matter in the inventive material.

The items of information required for a complete request for an advance waiver or an identified invention waiver include items which have been very frequently required so that DOE can apply the objectives and considerations set forth in the existing patent waiver regulations. They also include items which are relevant to national security or organizational conflict of interest considerations. All of these considerations are ones which DOE must take into account in processing a complete request.

II. Procedural Requirements

A. Review Under Executive Order 12291

This amended rule is exempt from review by the Office of Management and Budget under E.O. 12291 of February 17, 1981, pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7, dated December 14, 1984.

B. Review Under Regulatory Flexibility Act

This amended rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This amendment concerns policy and procedures for patent waivers affecting entities that are generally not small businesses since there is separate statutory authority (35 U.S.C. 202) governing disposition of invention rights of Government contractors that are small businesses. The amended rule imposes no significant burdens or impact on small entities. Therefore, DOE certifies that the amendment will not have significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to OMB for approval under the Paperwork Reduction Act.

D. Review Under National Environmental Policy Act

DOE has determined that the amendment is not a major Federal action with significant environmental impact and does not affect the quality of the environment. Consequently, the amendment does not require preparation of an Environmental Assessment or Environmental Impact Statement under National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (1982).

E. Opportunities for Public Participation

Section 501(c)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(c)(1) (1982), provides that if the Secretary determines that a subtantial issue of fact or law exists or that a proposed rule is likely to have substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. To preclude any issue in this regard, such an opporuntity will be provided.

1. *Written comment procedures.* Interested parties are invited to participate in this rulemaking by submitting views, data, or arguments with respect to the proposal set forth in this notice to Mr. Robert M. Webb, Procurement and Assistance Management, Office of Policy, MA–421, Department of Energy 1000 Independence Avenue SW., Washington, DC 20585. The comments and the outside of the envelope should be identified with the designation, "Docket No. D88–1." Three copies of the comments should be submitted.

All comments received by September 23, 1988 and other relevant information will be considered by DOE before final actions is taken regarding the proposed regulations.

2. *Public Hearing.* DOE has determined to hold one public hearing on this proposal. The time and place of the public hearing is indicated at the beginning of this notice.

Any person who has an interest in the proposed rulemaking or who is a representative of a group of persons that has an interest in this rulemaking may make a written request for an opportunity to make an oral presenation. Such a request should be directed to the DOE Assistant General Counsel for Patents at the address given at the beginning of the preamble and must be received by the date specified at the beginning of this notice. Requests may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned and, if appropriate, state why that person is a proper representative of a group with such an interest, give a concise summary of the proposed oral presentation, and provide a phone number where the person or group may be contacted through September 7, 1988.

Each person selected to be heard at the public hearing will be notified by September 7, 1988. Witnesses presenting oral testimony must bring seven copies of their statements to the hearing.

In the event any person wishing to testify cannot provide seven copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Richard Constant at the address and telephone number noted earlier in this notice.

3. *Conduct of hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any additional procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 1–E–152, 1000 Independence Avenue SW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday, through Friday except Federal holidays. Any person may purchase a copy of the transcript from the court reporter.

The public hearing may be cancelled if no public testimony is scheduled in advance. In the event the hearing is

cancelled, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**.

List of Subjects in 48 CFR Part 927

Inventions, Patents and waivers.

In consideration of the foregoing, Part 927 of Title 48 of the Code of Federal Regulations is proposed to be amended, as set forth below.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for Part 927 is proposed to be revised as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168), Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, 42 U.S.C. 5908; Atomic Energy Act of 1954, as amended, Sec. 152, 42 U.S.C. 2182; Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), 42 U.S.C. 7261a.

2. Section 927.370 is proposed to be added as follows:

927.370 Waiver of title to certain sensitive inventions.

(a) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a) (ii) or (iv) of title 35, United States Code, or pursuant to section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(b) In making a decision under this Section, the Secretary or his designee shall:

(1) Apply the stated general objectives for patent waivers under 927.300(a) of this subpart;

(2) Take into account the specific considerations applicable to advance waivers and identified invention waivers, respectively, under 927.300(a) of this subpart;

(3) Consider whether national security will be compromised;

(4) Consider whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons program or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(5) Consider whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(6) Consider whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this section shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under 927.300(a) of this subpart, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b) (3)–(6) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under 927.300(a) of this subpart, to allow the Secretary or his designee to make a decision under this section. Such information shall include, at a minimum, for advance waiver requests:

(1) An identification of all of the petitioner's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the petitioner is aware;

(2) A description of the petitioner's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the petitioner, the out-of-pocket costs of facilities or equipment to be made available by the petitioner for performance of the contract work which are not charged directly or indirectly to the Government under the contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(e) For identified invention requests, such requests shall include at a minimum:

(1) A description of the technical steps required and funds necessary therefor to develop the invention to the point of readiness for commercialization;

(2) A description of the plans, intentions and ability of the petitioner to commercialize the invention, including any anticipated amounts of capital and expenditures, and associated time periods, to be directed toward development and commercialization of the particular invention, together with a description of the comercial position (if any) of the petitioer in the marketplace, and a statement by the petitioner that either the petitioner or petitioner's present or intended licensee will expend the anticipated amounts of capital and resources required to develop the invention to the point of readiness for commercialization.

(3) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the petitioner, any anticipated future Government funding to futher develop the invention.

(4) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(5) A statement that petitioner will reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver petition.

(6) Where applicable, a statement of reasons why the petiton was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the petition was not filed in a timely manner.

(7) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended, (42 U.S.C. 2168) (1982), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(8) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the petitioner intends to be providing program planning advice or has provided program planning advice within the last three years.

(9) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(10) Identification of any and all proposals, work for others activities, or other arrangements submitted by the petitioner, DOE, or a third party of which petitioner is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the petitioner promptly if the waiver request is found not to be a complete request and, in that event, will provide the petitioner with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If petitioner does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If petitioner responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) For waiver requests as described in this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified herein, has been submitted by the petitioner to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver petition. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if petitioner is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the petition, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

[FR Doc. 88-17740 Filed 8-4-88; 8:45 am]
BILLING CODE 6450-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1004, 1041, and 1042

[Ex Parte No. 55; Sub-67]

Non-Rail Interpretations and Routing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rule.

SUMMARY: The Commission is proposing to consolidate its interpretations and routing regulations, presently found at 49 CFR Parts 1004, 1041, and 1042, in a central location at 49 CFR Part 1004, as described below. The proposal also streamlines and updates these regulations, and removes obsolete matter. No substantive changes are intended. Grouping related provisions in one place should aid the general public in finding and using the material.

DATES: Comments are due September 6, 1988.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 67) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Richard L. Gagnon, (202) 275-7711

or

Richard B. Felder, (202) 275-7691

[TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. Copies of the decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities because no substantive change in existing regulations is intended and rules targeted for removal are either obsolete or of extremely limited applicability.

The subjects involved in 49 CFR Parts 1004, 1041, and 1042 are: Administrative practice and procedure, motor carriers, and frieght forwarders.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: July 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1004 is proposed to be revised to read as follows:

PART 1004—NON-RAIL INTERPRETATIONS AND ROUTING REGULATIONS

Subpart A—Interpretation of Operating Rights

Sec.
1004.1 Return transportation.
1004.2 Authority to serve a particular area—construction.
1004.3 Incidental for-hire transportation by private carrier.

Subpart B—Miscellaneous Interpretations

1004.10 Gifts, donations, and hospitality by carriers.

Subpart C—Routing Regulations

1004.20 Regular-route motor passenger service.
1004.21 Traversal authority.
1004.22 Tacking.
1004.23 Elimination of routing restrictions—regular-route carriers.
1004.24 Elimination of gateways—regular- and irregular-route carriers.
1004.25 Redesignated highways.
1004.26 Misrouting, adjustment of claims.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922 (h)(1)(A).

Subpart A—Interpretation of Operating Rights

§ 1004.1 Return transportation.

A motor carrier may transport containers and other shipping devices inbound if they were used in its outbound transportation of the base commodity.

§ 1004.2 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder authorized to serve a municipality may serve all points within that municipality's commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and household goods freight forwarder, authorized to serve an unincorporated community having a post office of the same name, may serve all points in the United States not beyond the territorial limits, if any, fixed in such authority, as follows: (1) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more; (2) at all points in any municipality any part of which is within the limits described in paragraph (b)(1) of this section; and (3) at all points in any municipality wholly surrounded, or so surrounded except for a water boundary, by any municipality included under the terms of paragraph (b)(2) of this section.

§ 1004.3 Incidental for-hire transportation by private carrier.

A private carrier engaged in incidental for-hire transportation shall conduct such operations independently of its private operations and shall maintain separate records for each.

Subpart B—Miscellaneous Interpretations

§ 1004.10 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts of services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Commission shall take appropriate enforcement action to redress such unlawful expenditures.

Subpart C—Routing Regulations

§ 1004.20 Regular-route motor passenger service.

A regular-route motor passenger common carrier may serve: (a) All points on, and all municipalities wholly within and all unincorporated areas within 1 airline mile of, its authorized route; and (b) All military posts, airports, schools, and similar establishments that may be entered within 1 airline mile of its authorized route, but operations within any part of such establishment more than 1 airline mile from such authorized route may not be over a public road.

§ 1004.21 Traversal authority.

(a) *Scope.* An irregular-route motor carrier may operate between authorized service points over any reasonably direct or logical route unless expressly prohibited.

(b) *Requirements.* Before commencing operations, the carrier must, regarding each State traversed: (1) Notify the State regulatory body in writing, attaching a copy of its operating rights; (2) designate a process agent; and (3) comply with 49 CFR 1043.8.

§ 1004.22 Tacking.

Unless expressly prohibited, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service as follows:

(a) Regular-route authorities may be tacked with one another;

(b) Regular-route authority may be tacked with irregular-route authority;

(c) Irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less; and

(d) Irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 1004.23 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.* All certificates that, either singly or in combination, authorize the transportation by a motor common carrier of property over a single regular route or over two or more regular routes that can lawfully be tacked at a common service point shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points on, and within 1 airline mile of, an alternative route it elects to use if all the following conditions are met: (1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route; (2) the alternative route involves the use of a superhighway (*i.e.*, a limited access highway with split-level crossings); (3) the alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route, (i) extends in the same general direction as the carrier's authorized service route and (ii) is wholly within 25 airline miles of the carrier's authorized service route; and (4) service is provided in the same manner as, and subject to any

restrictions that apply to, service over the authorized service route.

§ 1004.24 Elimination of gateways—regular—and irregular-route carriers.

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they lawfully can be tacked to perform through service, may perform such through service over any available route.

§ 1004.25 Redesignated highways.

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

§ 1004.26 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Commission may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instructions. Damages caused by misrouting are not overcharges. Therefore, adjustments of claims for misrouting against rail and water carriers are governed by 49 U.S.C. 11706 (c)(1) and (d).

PART 1041—[REMOVED]

2. Part 1041 is proposed to be removed.

PART 1042—[REMOVED]

3. Part 1042 is proposed to be removed.

[FR Doc. 88-17652 Filed 8-4-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Acts; Interest Earned From Licenses Fees

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule.

SUMMARY: On December 9, 1985, the U.S. Fish and Wildlife Service published a proposed rule in the **Federal Register** (50 FR 50185) proposing that interest earned on revenues derived from license fees paid by hunters and fishermen be considered by the Secretary of the Interior as license fee revenue for purposes of the Federal Aid in Wildlife Restoration (Pittman-Robertson) and Federal Aid in Sport Fish Restoration (Dingell-Johnson) Acts. It also clarified situations causing diversions, defined other assets acquired by license fees, and identified sources of license revenues affected by the proposed rule. This action would require States to use interest earned on hunting and fishing license revenues for fish and wildlife resource management as a condition to remain eligible to receive Federal Aid (Pittman-Robertson or Dingell-Johnson) funds.

Twenty-four States and the District of Columbia provided comments on the proposal; nine supported the rule as proposed, one opposed it, and 15 suggested modifications. Seven comments were received from private parties; three supported the rule as proposed, one opposed it, and three suggested modifications.

Because of the high number of comments suggesting modification, the rule was not adopted. This amended proposed rule is being proposed to accommodate the concerns expressed.

DATES: Comments must be received by September 19, 1988. A three-year phase-in period for those States that will require legislative action to implement these requirements is intended when and if this proposal is adopted.

ADDRESSES: Any comments on the proposed requirements should be mailed to the Assistant Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Room 3024, Interior Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Conley Moffett, Chief, Division of Federal Aid, U.S. fish and Wildlife Service, Washington, DC 20240, telephone (703) 235-1526.

SUPPLEMENTARY INFORMATION: Both the Federal Aid in Wildlife Restoration (16 U.S.C. 669, *et seq.*) and Federal Aid in Sport Fish Restoration (16 U.S.C. 777 *et seq.*) Acts contain provisions requiring that no money may be appropriated to a State until that State has passed laws assenting to the provisions of the Act and has passed laws for the conservation of wildlife and fish. Such laws must contain a prohibition against diversion of license fees paid by hunters and fishermen for any other purpose than the administration of the State fish and wildlife agency. The proposed rule will clarify previously undefined Department of the Interior rules in accord with the generally-accepted principle that interest should accrue to principal from which it was generated.

Thirty-eight percent of the comments received as a result of the previous proposed rule pointed out that many States would be required to enact State laws to adopt the rules and that it could take several years. It was requested that a phase-in period be allowed so that States would not lose money during the period it took to make the required changes. To accommodate those concerns, this proposal allows a three-year period for those States that are not in compliance to conform their laws.

Twenty-three percent of the comments asked that commercial fishing licenses not be included and stated a variety of reasons why they should not. Because of those comments, this proposal does not include commercial licenses for the taking of fish or wildlife.

Thirteen percent of the comments stated the interest earned on license money has been used to pay for administrative services to support the fish and wildlife agency. If this source of funds were taken away, the fish and wildlife agency may still be charged directly for these services. No changes to the proposed rule were deemed necessary.

The remaining comments related to definitions, speculation on how programs would be affected, and statements of opinion. These comments were considered and incorporated as appropriate.

The existing Federal Aid in Wildlife Restoration Act and Federal Aid in Sport Fish Restoration Act require that

as a prerequisite to receiving federal funds, States must prevent diversions of license fees derived from fishermen and hunters to any purpose other than "the administration of said State game and fish department." The existing rule promulgated under authority of the Acts (50 CFR 80.4) states that "[a] diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise: (1) Loses control of the expenditure of any portion of its license revenues, or (2) loses control of capital assets (or income therefrom) derived from license revenues * * * *" Because of the increased complexity of State government and the variety of responsibilities assigned to fish and wildlife agencies, the requirements relating to control of assets and expenditures involve an increased number of controls at higher levels in the State. Accordingly, this proposed rule does not require that fish and wildlife agencies have complete contol over license funds, but, instead, that license revenues must be used by State fish and wildlife agencies only to manage fish and wildlife resources over which they have management authority by the State law.

The Department has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

This proposed rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The annual effect on the economy will be less than the threshold required for a major rule, no major increase in costs or prices will occur, and no significant effects on competition, employment, investment, productivity, innovation are expected. This proposed rule does not contain any recordkeeping or infromation collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

The principal author of this proposal is Thomas W. Taylor, Division of Federal Aid, U.S. Fish and Wildlife Service.

List of Subject in 50 CFR Part 80

Fish grant programs, Natural resources, Grant administration, and Wildlife.

PART 80—[AMENDED]

Accordingly, it is proposed to amend 50 CFR 80 as follows:

1. Authority for 50 CFR 80 continues to read as follows:

Authority: Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i).

2. Part 80 is amended by revising Section 80.4 to read as follows:

§ 80.4 Diversion of license fees.

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of license issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For purposes of this rule, revenue with respect to license sales by vendors, is considered to be the net income to the State after deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

(1) General or special licenses, permits, stamps, tags, access fees or other charges imposed by the State to hunt or fish for sport or recreation.

(2) Sale of real or personal property acquired or produced with license revenues including, but not limited to, minerals, energy resources, timber, grazing, agriculture crops, and animal products.

(3) Interest, dividends, or other income earned on license revenues.

(4) Federal reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.

(b) For purposes of this rule, administration of the State fish and wildlife agency includes only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.

(c) A diversion of license fee revenues occurs when any portion of license revenues, or assets acquired with such revenues, are used for any purpose other than the administration of the State fish and wildlife agency.

(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Adequate legislative prohibitions are in place to prevent further diversion of license revenue, and

(2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenues diverted or the current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

(e) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

Date: June 10, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-17716 Filed 8-4-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 151
Friday, August 5, 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

Agricultural Marketing Service

[FV-88-113]

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Marketing Policy.

SUMMARY: This notice sets forth a summary of the 1988–89 marketing policy for lemons grown in California and Arizona. The marketing policy was discussed and approved on July 6, 1988, by the Lemon Administrative Committee, which locally administers the marketing order covering California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1988–89 season.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1988–89 California-Arizona lemon crop will be considered if received by September 6, 1988.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456. Such submissions should reference the date and page number of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120. Growers and handlers of lemons may obtain a copy of the marketing policy directly from the Lemon Administrative Committee, 117 West Ninth Street, Room 905, Los Angeles, California 90015. Copies of the marketing policy are also available from Mr. Belden.

SUPPLEMENTARY INFORMATION: Pursuant to § 910.50 of the marketing order covering lemons grown in California and Arizona, the Lemon Administrative Committee, hereinafter referred to as the "committee," is required to hold a marketing policy meeting not later than August 15 of each fiscal year and thereafter submit such marketing policy to the Secretary. The order, issued pursuant to the Agricultural Marketing Agreement Act of 1937 [the "Act," 7 U.S.C. 601–674], as amended, authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Regulation of export shipments of lemons and lemons utilized in the production of processed lemon products is not authorized under the order.

Each year, not later than August 15 of the fiscal year (or such later date as the committee may establish with the approval of the Secretary), the committee is required to hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for such fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy must contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) the level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy, the committee is required to submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

Marketing policies for California-Arizona lemons are intended to apply to a 12-month period beginning on August 1 and ending on July 31 of the following year. This 12-month period contains a full production cycle in all of the regulated districts and serves to define an annual marketing season.

The committee has prepared a marketing policy for the 1988–89 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's evaluation of supply and demand factors expected during the marketing season. This information is essential to the review and evaluation of committee recommendations for the issuance of regulations. The committee evaluates market conditions and may make recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season without disrupting markets. The committee may also recommend size regulations applicable to fresh domestic shipments.

The committee identified several general considerations in forming its 1988–89 marketing policy. It indicated that a satisfactory supply-demand relationship is necessary for a satisfactory price structure for any product. However, the California-Arizona lemon industry, which produces more than 90 percent of the U.S. supply, is faced with unique problems and challenges that distinguish it from other perishable food industries. The committee pointed out that unlike other fruits, lemons are generally not consumed independently but are used as ingredients for flavoring or decorative purposes. These characteristics contribute to a highly inelastic demand for fresh lemons.

The committee also called attention to the seasonality of demand for fresh lemons which peaks when supplies are traditionally lowest. According to the committee, the California-Arizona lemon industry expanded into different geographic areas with different climatic production patterns in order to offset this marketing paradox but has experienced a surplus production capacity in part as a result of this expansion. The committee pointed out that the California-Arizona lemon industry has dealt with the overproduction problem by reducing acreage from a maximum of more than 90,000 acres ten years ago to approximately 63,000 acres currently, and that such adjustments are an ongoing process.

It is the committee's contention, however, that further acreage reduction is not a complete solution to the industry's supply problem, citing sharp weather-related variations in output in the past several years, and that use of the marketing order to stabilize supplies is vital to the survival of the current California-Arizona lemon industry.

In its 1988–89 marketing policy, the committee projects the California-Arizona lemon crop at 44,760 cars (1,000 cartons per car with a net weight of 37½ pounds per carton). This compares with an estimated total production of 43,699 cars in 1987–88 and 57,312 cars in 1986–87.

The production area is divided into three districts. The current production estimates by district (with last year's production in parentheses) are as follows: District 1—6,200 cars (6,868); District 2—26,760 cars (23,790); and District 3—11,800 cars (13,041).

The committee projects that the fruit sizes in the 1988-89 fiscal year will fall within normal ranges and that approximately 80–85 percent of the 1988–89 crop will average size 165's (2.13 inches in diameter) or larger. Current regulations limit domestic fresh market shipments of lemons to size 235's (1.82 inches in diameter) and larger. The committee estimates that less than 3 percent of the projected 1988–89 production will be smaller than this size and that the most efficient utilization of such small sized fruit is in product outlets.

The committee estimates that 1988–89 shipments to domestic fresh market outlets, including Canada, may total 16,500 cars. This would be 9 percent above the preceding four-year average. This would also be above the record large movement being marketed in the marketing season now drawing to a close (1987–88 shipments of fresh lemons to domestic markets are estimated to reach 16,022 cars). The committee anticipates an "opportunity" for fresh export shipments to total 9,000 cars in 1988–89 compared to 8,500 cars in 1987–88. Processing and other disposition is forecast at 19,260 cars compared to 17,800 cars in 1987–88.

In terms of total crop utilization, 37 percent of the 1988–89 crop is expected to be accounted for in domestic fresh markets compared with 38 percent in 1987–88; fresh exports are projected to require 20 percent of total 1988–89 utilization, the same percentage as the 1987–88 season; and processed and other uses would account for a residual 43 percent utilization compared with 42 percent in the season now ending. In terms of volume, domestic fresh market shipments are expected to be up about 1 percent from 1987–88's estimates, export shipments are expected to be up about 6 percent, and processed and other utilization are expected to be up approximately 5 percent.

The market for California-Arizona fresh lemons is influenced by the availability of substitute commodities. Fresh lemons face competition from other varieties of citrus fruit, lemon juice, lemonade, and a number of soft drink products. Moreover, the California-Arizona lemon crop is also in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 600–650 cars for 1988–89. These shipments are expected to be confined to the mid and late summer. The potential for import competition is much larger both in quantity and seasonal availability. However, imports in the last five years have accounted for less than 5 percent of total domestic consumption. The committee feels that the weekly volumes that it recommends for supplying U.S. markets with fresh domestic fruit precludes the need for reliance on import sources.

Based on the most recent data available, the 1987–88 season-to-date average fresh equivalent on-tree parity price for California-Arizona lemons through June is $6.35 per carton, about 102 percent of the equivalent parity price. The projected season average parity price for the 1988–89 season is $6.65 per carton. The Agricultural Marketing Service (AMS) is currently evaluating the 1988–89 price outlook and when this process is completed will use the results of this evaluation in reviewing the committee's marketing policy for the 1988–89 season.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulation for the 1988–89 season. Comments are invited on the appropriate levels of fresh lemons which can be made available to the fresh domestic market and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. The notice provides a 30-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and discussed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

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

Dated: August 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–17665 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1989 Feed Grains Program and Farmer-Owned Reserve Program Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations; Correction.

SUMMARY: The Commodity Credit Corporation is correcting an error in the Supplementary Information of the proposed determinations with respect to the 1989 crop of feed grains which appeared in the **Federal Register** on July 7, 1988 (53 FR 25518).

FOR FURTHER INFORMATION CONTACT: Philip Sronce, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3748, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7924.

The date "September 1, 1988" where it first appears in paragraph b. *Acreage Reduction Program (ARP)* in the third column on page 25519 of the **Federal Register** on July 7, 1988 (53 FR 25519) is corrected to read "September 30, 1988".

Signed at Washington, DC, on July 25, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–17747 Filed 8–4–88; 8:45 am]

BILLING CODE 3410-05-M

Cooperative State Research Service

Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, Cooperative State Research Service announces the following meeting:

Name: Animal Health Science Research Advisory Board.

Date: September 23, 1988.

Time: 8:30 a.m.

Place: Room 338–C, Aerospace Building, U.S. Department of Agriculture, 901 'D' Street, SW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board Member Names and Agenda: Available from contact person below.

Contact Person: Dyarl D. King, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202)447–6428.

Done at Washington, DC, this 2nd day of August, 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–17744 Filed 8–4–88; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Lake Bradford Land Exchange; Intent to Prepare Environmental

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to exchange approximately 330 acres of national forest land located in the Wakulla Ranger District, Apalachicola National Forest, Leon County, Florida for approximately 3,100 acres of private land located in the Wakulla Hanger District, Apalachicola National Forest, Wakulla County, Florida. The 3,100 acres of private land consists of 20 separate parcels ranging in size from 10 to 599 acres. These lands are surrounded by or adjacent to national forest lands. The timber has been removed and new stands of trees have been established on most of the private tracts. Of the 20 tracts, two contain river frontage on the Sopchoppy River. That river is currently being studied for inclusion in the National Wild and Scenic River System. If the proposed exchange takes place, the lands acquired by the federal government would become a part of the Apalachicola National Forest and would be managed to help achieve the multiple-use goals and objectives established in the National Forests in Florida Land and Resource Management Plan. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received by August 31, 1988 to ensure timely consideration.

ADDRESS: Submit written comments and suggestions concerning the scope of analysis to Robert T. Jacobs, Forest Supervisor, National Forests in Florida, Suite 4061, 227 N. Bronough Street, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Haymond K. Mason, Planning Staff Officer, National Forests in Florida, Tallahassee Florida 32301, phone 904–681–7265.

SUPPLEMENTARY INFORMATION: The National Forests in Florida Land and Resource Management Plan that provides management direction for all national forests in Florida, including the Apalachicola National Forest, was completed in January 1986. That Plan gives direction for the identification of tracts of land desirable for exchange. A tract of approximately 330 acres of national forest land located adjacent to the Tallahassee airport has been identified as meeting the criteria for being desirable for exchange. This tract is suited for exchange because it is isolated form other National Forest System lands, it could serve a greater public need by being in other than federal ownership, and it is suitable for development by the private sector.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this tract. One alternative would be to retain the lands in government ownership with management direction remaining unchanged. Another alternative would be to carry out the proposed exchange. Another would be to retain the lands in federal ownership with management direction changing to provide for additional recreation development and use of the area. Other alternatives may be developed based on the results of the scoping process.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies; adjacent landowners; and other individual or organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Scoping for this proposal began in early July when a mailing was made to known interested and affected individuals, organizations, and agencies. Included on the mailing list were the property owners adjacent to both the National Forest tract and the private tracts. This mailing included a description of the proposed action, maps identifying the National Forest tract and the private tracts involved, and an request for assistance in identifying issues, concerns, and opportunities associated with the proposal and the affected tracts.

The draft environmental impact statement is expected to be filed with the Environmental protection Agency and to be available for public review by March 1989. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the area between Lake Bradford and the Tallahassee Municipal Airport participate at this time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement

or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3) In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by July 1989. In the final environmental impact statement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

Date: July 28, 1988.

Leroy Jones,

Deputy Regional Forester.

[FR Doc. 88-17633 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice; continuance of interim policy.

SUMMARY: The Forest Service is reissuing an interim directive that clarifies its National Environmental Policy Act implementation policy on categorical exclusions from documentation. The directive emphasizes the importance of recordkeeping in conjunction with categorical exclusion determinations, and it limits the types of low-impact silvicultural activities that normally qualify for categorical exclusion. It is necessary to reissue the interim direction to provide continuing direction while the agency prepares a more comprehensive revision of its environmental analysis and documentation policy and procedures.

EFFECTIVE DATE: The new interim directive will become effective August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-4708.

SUPPLEMENTARY INFORMATION: Forest Service directive system policy limits the duration of an interim directive (ID) to one year. If, upon expiration of an ID, the Agency is not yet prepared to incorporate the interim direction into the parent directive text, Agency policy allows reissuing the interim directive.

On August 10, 1987, the Forest Service issued Interim Directive No. 14 to Forest Service Manual Chapter 1950 (52 FR 30935). That interim directive superseded the Agency's then existing policy on determining when the analysis of a proposed action could be categorically excluded from documentation in an environmental assessment or environmental impact statement (June 24, 1985; 50 FR 26081).

Interim Directive No. 14 expires August 10, 1988. Because the Agency is in the process of making comprehensive revisions to all of Chapter 1950 and the accompanying environmental analysis handbook, FSH 1909.15, the direction in ID No. 14 cannot be incorporated at this time into the parent text of the Manual. In order to prevent a gap in this needed direction, the agency is reissuing the interim directive.

The Agency plans to publish the more comprehensive changes in its National Environmental Policy Act implementing policy and procedures in the next few months for public comment. Direction on categorical exclusions will be in incorporated in that proposed revision.

The interim directive is being reissued without change. For ease of reference, the full text of the directive as it will be distributed to Forest Service personnel is set out at the end of this notice.

Date: July 28, 1988.

George M. Leonard,

Associate Chief.

Forest Service Manual

Interim Directive No. 16.

Duration: One year.

Chapter: 1950—Environmental Policy and Procedures.

Posting Notice: Last ID was No. 15 to FSM 1920, issued 2/8/88.

This interim directive is a reissuance of ID No. 14, issued August 10, 1987. It clarifies FSM section 1952.2—Categorical Exclusion From Documentation. It deletes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion. It emphasizes that a project file should be maintained for any records created during analyses of actions that are categorically excluded from documentation in an environmental assessment or an environmental impact statement. It provides examples of the types of records that might be included in the project file. It also limits the use of categorical exclusions for low-impact silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres" and adds "miscellaneous forest product sales."

This policy applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after the effective date of this interim directive. Proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed and documented in an environmental assessment or an environmental impact statement as a result of this interim directive.

1952.2—Categorical Exclusion From Documentation In An Environmental Assessment Or An Environmental Impact Statement. (40 CFR 1508.4). In addition to the seven categories of actions excluded from documentation in 7 CFR 1(b)(3), certain other actions may be categorically excluded from documentation in an environmental assessment or environmental impact statement. To determine if an action may be categorically excluded, an environmental analysis, including scoping, must be conducted. (FSH 1909.15, ch. 10 and 20).

The guide for determining whether an action may be excluded is the significance of the effects (40 CFR 1508.27). In unusual circumstances an action that normally might be categorically excluded may have a significant environmental effect on the

quality of the human environment and require an environmental impact statement. Unusual circumstances might include areas involving threatened and endangered species; critical habitat; flood plains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Interested and affected persons must be informed in an appropriate manner (40 CFR 1506.6 and FSM 1950.3) of a decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement.

During the analysis, maintain a project file for any records prepared, such as (1) a list of interested and affected people contacted during scoping, (2) the results of the analysis, (3) documentation of the determination of consistency with the Forest Plan (FSM 1920, ID No. 13. 1/20/87), (4) documentation of the notification given of the decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement (for example, telephone message, news release, and so forth), and (5) a list of the people notified of the decision to proceed.

Typical classes and representative examples of actions that might be categorically excluded are listed below. Experience and environmental analysis indicate that these actions and classes usually do not significantly affect the quality of the human environment, individually or cumulatively. These typical classes include most forest management activities that normally could be categorically excluded. Proposed actions considered for categorical exclusion which are not clearly within a typical class must have no more environmental impact than those which are.

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

4. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres; site preparation; and planting and seeding.

5. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

6. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

7. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

8. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

9. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

10. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

[FR Doc. 88-17659 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

Umpqua National Forest Boundary Extension, Tiller Administrative Site

AGENCY: Forest Service, USDA.

ACTION: Notice of boundary extension.

SUMMARY: The Secretary of Agriculture has approved establishment of a purchase unit and the extension of the boundaries of the Umpqua National Forest to include the Tiller Administrative Site. A copy of the order as signed by the Secretary is set out at the end of this notice.

EFFECTIVE DATE: By order of the Secretary of Agriculture, the boundary revision was effective June 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Johnson, Lands Specialist, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, (703) 235-2406.

Date: July 26, 1988.

George M. Leonard,

Associate Chief.

Office of the Secretary

Change in Boundary of Umpqua National Forest

Pursuant to authority vested in the Secretary of Agriculture by section 11 of the Act of March 1, 1911, (36 Stat. 961) as amended, notice is hereby given of the establishment of a purchase unit and the extension of the boundaries of the Umpqua National Forest as described below to include the same and all lands within the Umpqua National Forest as adjusted that have been acquired by the United States under the Act of March 3, 1925, the Act of April 8, 1935 and the Act of August 3, 1956, and which, by statute (Act of September 2, 1958, 72 Stat. 1571), now attain status as National Forest land subject to the Act of March 1, 1911.

Umpqua National Forest, Oregon, Willamette Meridan

Douglas County

The following property is located in W½ NE¼, NE¼ NW¼ Sec. 33, T.30 S., R.2 W., W.M.:

Beginning at a point, which is the E¼ corner of section 33, thence N89°42'W 918.34 feet, thence S44°52'W 1230.96 feet, thence S23°48'W 196.67 feet to a point opposite Engineer's station 1220+38.05 on the North Right-of-Way line of Douglas County Rd. #1, thence S64°13'E along said Right-of-way 393.18 feet, thence S61°15'E 84.48 feet along said Right-of-way, thence S55°01'E 100.66 feet to South line of NW¼NE¼ of Section 33, thence S89°37'E 531.08 feet along said South line, thence S48°34'W 328.00 feet, thence S56°33'W 4571 feet to a point on the Nourthern Right-of-way line of Douglas County Road #1, thence S42°28'E 121.12 feet along said Right-of-way line, thence S44°45'E 292. 60 feet along said Right-of-way, thence S61°57'E 378.24 feet along said Right-of-way line, thence S78°04'E 262.58 feet along said Right-of-way line, thence S78°04'E 74.21 feet along said Right-of-way line, thence NO°02'W 783.40 feet, thence NO°02'W 884.15 feet, thence S39°18'W 652.92 feet, thence S40°50'W 230.55 feet, thence N49°10'W 192.90 feet, thence N40°50'E 230.99 feet, thence N41°32' 609.23 feet, thence N39°41' 243.40 feet, thence NO°02'W 176.87 feet to point of beginning containing 51.40 acres more or less.

Effective Date: This order is effective on the 21th of June, 1988.

Richard E. Ling,

Secretary, Department of Agriculture.

[FR Doc. 88-17660 Filed 8-4-88; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Oglethorpe Power Corp., Tucker, GA; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $704,000,000 to Oglethorpe Power Corporation (Oglethorpe), Tucker, Georgia. This loan guarantee will provide funds needed to complete construction of the Rocky Mountain Pumped Storage Hydroelectric Project (Project), which includes two reservoirs, two auxiliary pools, approximately 2,700 feet of tunnel and penstock, a nominal 800 MW power plant, a switching station, and 2.7 miles of 230 kV transmission line. The investment requirements for this application may be revised as a result of subsequent engineering and other studies. Based upon an estimate of the final direct construction cost, Georgia Power Company has completed approximately 15 percent of the Project.

FOR FURTHER INFORMATION CONTACT: Mr. F.F. Stacy, Jr., President and Chief Executive Officer, Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed Project, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Stacy at the address given above. In order to be considered, proposals must be submitted on or before September 6, 1988 to Mr. Stacy. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Oglethorpe and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this Project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 29, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88–17662 Filed 8–4–88; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency.

Title: Quarterly Narrative Performance Report.

Form Number: Agency—None OMB 0640–0007.

Type of Request: Revision.

Burden: 600 Responses 9600 reporting hours. Average hours per response—16.

Needs and Uses: Information is used to compare the individual organization's accomplishments against its performance goals and to evaluate overall results of the agency's funded programs.

Affected Public: Project Operators.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–17643 Filed 8–4–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke In Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part.

SUMMARY: In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers four manufacturers and/or exporters of this merchandise to the U.S. and generally the period October 1, 1986 through September 30, 1987. The review indicates the existence of dumping margins for three firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. The Department has also tentatively determined to revoke the finding with respect to two firms, Boston and Manuli.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: August 5, 1988.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1988, the Department published in the **Federal Register** (53 FR 16444) the final results of its last administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The petitioner and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on November 18, 1987 (52 FR 44161). The Department has now conducted that

administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 3919.90.20, 3919.90.50, 4811.21.00, 4821.90.20, 4823.11.00, and 5906.10.00.

The review covers four manufacturers and/or exporters to the U.S. of Italian pressure sensitive plastic tape and generally the period October 1, 1986 through September 30, 1987.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, ocean freight, foreign inland freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, differences in credit expenses, discounts, and differences in packing. NAR's claim for an adjustment for merchandise differences was inadequate. NAR has had seven months and numerous opportunities to submit data to support a differences-in-merchandise adjustment with respect to pressure sensitive tape sold in the U.S. and in the home market. Despite several submissions, NAR failed to provide the Department with an adequate response to questions concerning its differences-in-merchandise claim. NAR failed to provide (1) direct factory overhead, (2) cost data for several tape widths, and (3) any explanation of its production process. In addition, there are inconsistencies between NAR's June 13, 1988 and July 6, 1988 submissions in that certain information was listed in one submission but not the other. Given all of the above deficiencies and inconsistencies, we are compelled to resort to the use of the data used in the last review as best information available. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (Percent)
NAR	10/86–9/87	2.45
Manuli	10/86–9/87	[1] 0
Irplastnastri	10/86–9/87	[1] 12.66
Boston	10/85–9/87	[1] 8.67

[1] No shipments during the period; margins from last review in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication.

Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (51 FR 43955, December 5, 1986). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after September 30, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, a cash deposit of 2.45 percent shall be required. These deposit requirements are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Boston made no shipments to the United States for four years and Manuli made no sales at less than fair value for one year and no shipments to the United States for two years. Boston and Manuli have requested partial revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, both firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreements.

Therefore, we tentatively determine to revoke in part the antidumping finding on pressure sensitive plastic tape from Italy with respect to Boston and Manuli. It this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Boston or Manuli and entered, or withdrawn from warehouse, for consumption on or after October 1, 1987.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a and 353.54.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: July 29, 1988.

[FR Doc. 88–17644 Filed 8–4–88; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-071]

Viscose Rayon Staple Fiber From Finland; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers Kemira Oy Sateri and the

period March 1, 1987 through February 29, 1988. We found no dumping margin during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 4196) the final results of its last administrative review of the antidumping finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

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, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20330. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable in TSUSA items 309.4320 and 309.4325. This product is currently classifiable under HS item numbers 5504.10.00 and 5504.90.00.

The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

United States Price

In calculating United States price the Department used purchase price, because all sales were made to unrelated parties prior to importation, as defined in section 772 of the Tariff Act of 1930, 19 U.S.C. 1677a ("the Tariff Act"). Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for handling, foreign inland freight, ocean freight and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on the ex-factory price to unrelated purchasers in the home market. We made adjustments for a cash discount and differences in credit expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margin exists for Kemira Oy Sateri for the period March 1, 1987 through February 29, 1988.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall not require any cash deposit of estimated antidumping duties for Kemira Oy Sateri. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 29, 1988 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Finnish viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–17645 Filed 8–4–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 80735–8135]

Family of Services and Climate Dial-Up Service

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the National Oceanic and Atmospheric Administration's (NOAA) FY 89 fee schedule for the National Weather Service's (NWS) Family of Services (FOS) and the Climate Analysis Center's (CAC) Climate Dial-Up Service. The FOS and the CAC Climate Dial-Up Service provide external user access to near real-time weather and flood data and other information as well as climatalogical data accessible in the Washington area. This notice announces the fee schedule for the eight medium speed communication services which make up the FOS as well as the CAC Climate Dial-Up Service. It further lists the points of contact for each of these services.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427–7258.

SUPPLEMENTARY INFORMATION: Although the Department of Commerce/NOAA/NWS is not legally required to issue this notice of fees under 15 U.S.C. 1525, the

notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 313 and 15 U.S.C. 1525.

Date: July 29, 1988.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

NOAA announces the FY 89 fee schedule for the National Weather Service (NWS) Family of Services (FOS) and the Climate Analysis Center (CAC) Climate Dial-Up Service.

The FOS provides external user access to near real-time weather and flood data and information available on a family medium speed communication services accessed in the Washington area. The FOS is divided into eight services described below. Along with the service description is the one-time connection fee which covers the expense related to establishing service and the annual maintenance fee which covers the Government's expense in maintaining the service provided. This expense includes direct labor and other related costs as well as computer and communication costs. Each years annual service fee is based on the previous years costs for that individual service divided by the number of direct subscribers.

The family of services	One time connection fee	FY 89 fee
Public Product Service (PPS).... Forecasts and warnings in an easily-read, plain language format.		$2,500
Public Product Service Back-Up (PPSB)..... Same as Public Product Service.		8,500
Domestic Data Service (DDS).... Coded observations, reports, forecasts, and analysis.	2,500	3,000
International Data Service (IDS)..... Worldwide coded observations, reports, and forecasts.	2,500	3,500
Numerical Product Service (NPS)..... Global model-derived forecasts and analysis in a gridded binary format.	5,000	12,000
Direct Connect Service (DCS).. Same as NPS, exception being subscriber has a direct post on the NWS Telecommunications Gateway.	5,000	24,500
National Facsimile Service (NAFAX)..... 100 facsimile charts of analysis, prognosis and observed data including 10 satellite photos-analog signal.	2,500	19,000
Digital Facsimile Service (DIFAX)..... 300 facsimile charts of analysis, prognosis and observed data similar to those on NAFAX plus international aviation charts and agricultural products.	2,500	4,000

With the exception of PPSB and NAFAX all fees remained the same as in FY 88 and DCS was reduced.

Besides the fees listed above, subscribers are required to pay for all related telephone line charges into the Washington area. For more information on the Family of Services please contact: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 16th Street, Rm. 1412, Silver Spring, Maryland 20910.

The CAC Climate Dial-Up Service provides near real-time delivery of climate information by providing telephone-computer menu access to the CAC data base. Up until this year, this service was considered a development system and, thus, had levied no charges. In FY 89, this service will be upgraded and will have significant enhanced capabilities. The user fee described below will be based on the number of times per year subscriber's access the service. As with the FOS, the fees are required to recover the costs for operating this service. In addition, subscribers will continue to incur long-distance charges where applicable.

The annual fee scale for the CAC Climate Dial-Up Service will be as follows:

Very Heavy User (100 or more calls per year).....$600
Heavy User (52–99 calls per year).....$400
Moderate User (12–51 calls per year).....$140
Light User (1–11 calls per year).....$48

For more information on this service contact: Ms. Joanna M. Dionne, Climate Dial-Up Service, Room 805, World Weather Building, Washington, DC 20233, Telephone: 301–763–8071.

[FR Doc. 88–17646 Filed 8–4–88; 8:45am]

BILLING CODE 3510–12–M

Endangered Species; Application for Permit: Steve W. Ross and Dr. Mary L. Moser (P423)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 FR Parts 217–222).

Applicant: Steve W. Ross, Dr. Mary L. Moser, Zoology Department, Box 7617, North Carolina State University, Raleigh, NC 27635–7617.

Type of Permit: Scientific Research.

Name and Number of Animals: Shortnose sturgeon (*Acipenser brevirostrum*) 10.

Type of Take: Sturgeon will be captured using bottom-set, large-meshed gill nets and weighed, measured, and tagged for population studies.

Location of Activity: Cape Fear and Brunswick Rivers, North Carolina over a 1 year period.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: August 1, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–17724 Filed 8–4–88; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 5, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 10, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 21885) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-17717 Filed 8-4-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: September 5, 1988.

ADDRESS: Committe for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Cover, Generator Set
6115-00-941-1655
Folder, File
7530-00-990-8884
(Requirements for Chicago, Illinois, Supply Distribution Facility only)
Flagstaff, Wood
8345-00-242-3650
Liner, Flyer's Trousers
8415-00-844-9815
8415-00-844-9816
8415-00-844-9817
8415-00-844-9818

Services

Forms/Publication Distribution
U.S. Department of Agriculture
Landover, Maryland

Janitorial/Custodial
U.S. Army Reserve Center #1
4350 Kingshighway Boulevard
St. Louis, Missouri.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-17718 Filed 8-4-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 28, 1988.

The USAF Scientific Advisory Board panel on Superconductors for Aerospace Applications will meet on August 31, 1988 through September 2, 1988 from 8:30 p.m. to 5:00 p.m. at the Pentagon, Washington, DC.

The purposes of this meeting are to review the programs of various Federal agencies to develop high-temperature superconductors and to identify Air Force missions where application of these new technologies may provide the most benefit.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-17667 Filed 8-4-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

July 29, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs meeting previously published on July 6, 1988, 53FR25363, has been changed to August 23, 1988, from 8:00 a.m. to 5:00 p.m., at the Ogden Air Logistics Center (OA-LC), Hill AFB, UT, and on August 24, 1988 from 8:00 a.m. to 5:00 p.m., at the 421 & 388 Tactical Fighter Wings, Hill AFB, UT.

The purpose of this meeting is to receive briefings and gather information on OA-LC's and two typical fighter wings' perception of the problem and their efforts to solve them. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-17668 Filed 8-4-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Center for Education Statistics

National Assessment of Educational Progress (NAEP); Meeting

ACTION: Notice of a public meeting.

The National Center for Education Statistics will hold a public meeting to discuss changes in the National

Assessment of Educational Progress (NAEP) resulting from amendments to the legislation authorizing NAEP (Pub. L. 100–297).

The meeting will be held on Monday, August 15, 1988 from 9:00 a.m. to 12:00 noon in Room 326, 555 New Jersey Avenue NW., Washington, DC.

Anyone interested in obtaining a copy of briefing papers on the issues to be discussed, as well as preliminary plans for the 1990 and 1992 assessments, may request these documents by writing or calling Eugene Owen, NAEP Project Officer, Room 513b, 555 New Jersey Avenue NW., Washington, DC, 20208; telephone: 202–357–6746.

The public is invited to make comments at the meeting on August 15 or to submit written comments before, during, or after the meeting, but no later than September 30, 1988.

Dated: August 3, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–17854 Filed 8–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Trespassing On DOE Property; Idaho Operations Office Properties

AGENCY: Department of Energy.

ACTION: Designation of Idaho operations office properties and facilities as off-limits areas.

SUMMARY: The Depatment of Energy (DOE) hereby amends the previously published site description of the Grand Junction Project Office located in Grand Junction, Colorado and designates the Component Development and Integration Facility, located in Butte, Montana; the Willow Creek Building, DOE Headquarters Building, Technical Sciences Building, and certain warehouse facilities all located in Idaho Falls, Idaho; and various DOE vehicle/bus parking lots, located in Idaho Falls Arco, Highway 20 in Bonneville County, Blackfoot, Mackay, Shelley, Rexburg, Rigby, and Pocatello, as Off-Limits Areas in accordance with 20 CFR Part 860, thereby making it a federal crime under 42 U.S.C. 2279a for unauthorized persons to enter into or upon these Idaho Operations Office properties and facilities. If unauthorized entry into or upon these properties is into an area enclosed by a fence, wall, floor, roof or other such standard barrier, conviction for such unauthorized entry may result in a fine of not more than $5,000 or imprisonment for not more than one year or both. If unauthorized entry into or upon the properties is into an area not enclosed by a fence, wall, floor, roof, or other such standard barrier, conviction for such unauthoized entry may result in a fine of not more than $1,000.

FOR FURTHER INFORMATION CONTACT: Jo Ann Williams, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975; D.J. Bergquist, Office of Chief Counsel, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, (208) 526–1457.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), successor agency to the Atomic Energy Commission (AEC), is authorized, pursuant to section 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 227a) and section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR Part 860, published in the **Federal Register** on July 9, 1975 (40 FR 28789–28790), and section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into our upon any DOE facility, installation or real property. By notice dated October 19, 1965, appearing at page 13278 of the **Federal Register** (FR Doc. 65–11108), the Atomic Energy Commission prohibited unauthorized entry into or upon the Grand Junction site of the AEC. This notice amends the site description of the Grand Junction site, now referred to as the Grand Junction Project Office. The DOE also hereby gives notice that the Component Development and Integration Facility, located in Butte, Montana; the Willow Creek Building, DOE Headquarters Building, Technical Sciences Building and certain warehouse facilities, all located in Idaho Falls, Idaho; and various DOE vehicle/bus parking lots, located in Idaho Falls, Arco, Highway 20 in Bonneville County, Blackfoot, Mackay, Shelley, Rexburg, Rigby, and Pocatello are designated as Off-Limits Areas. Accordingly, the DOE prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4 into and upon these Idaho Operations Office sites. Except for the Grand Junction Project Office, the sites referred to above have not previously been designated as Off-Limits Areas. Descriptions of the sites being designated at this time are are follows:

Grand Junction Project Office Facility

All that portion of Lot 1 lying west of the right of way of the Denver and Rio Grande Western (D&RGW) Railroad Company, and all of Lots 6 and 7, excepting out a tract of land located in Mesa County, Colorado, beginning at the northeast corner of Government Lot 7 of Section 27, Township 1 South, Range 1 West, Ute Meridian; thence south along said section line 927.111 feet; thence N 15°13'00" W 960.80 feet; thence due east 252.18 feet back ot the true point of beginning, containing 2.68 acres, more or less; and also excepting out a tract of land located in Mesa County, Colorado Section 27, T1S R1W of the Ute Meridian more particularly described as follows: Commencing at the northeast corner SE¼ NE¼ Sec. 27, Township 1 South, Range 1 West, Ute Meridian; thence N 36°44'34" W 984.95 feet to the true point of beginning, that being a point on the west R.O.W. of the D&RGW Railroad, thence N 32°09'57" W 91.61 feet; thence N 56°13'47" W 100.32 feet; thence N 89°03'27" W 174.50 feet; thence S 85°10'12" W 282.68 feet; thence S 72°14'54" W 58.59 feet; thence S 51°07'33" W 201.80 feet; thence S 47°34'54" W 224.76 feet; thence S 38°11'37" W 113.15 feet; thence S 45°25'29" W 53.64 feet; thence S 05°28'49" E 43.4 8 feet to existing fence line; thence along said fence S 38°53'06" W 34.42 feet; to the high water mark of the Gunnison River, thence along said high water mark for the following eight courses: N 08°15'56" W 282.72 feet; N 00°37'40" E 242.34 feet; N 68°04'07" E 88.18 feet; N 87°11'15" E 209.44 feet; N 87°04'11" E 251.57 feet; N 82°29'46" E 229.91 feet; N 82°54'06" E 162.91 feet; N 80°12'18" E 289.04 feet to the intersection of the west ROW of the D&RGW Railroad; thence along the arc of a curve to the left whose radius is 1030.00 feet and whose long chord bears S 15°58'10" W 311.12 feet to the true point of beginning, containing 5.32 acres more or less; all being subject to fenced right-of-way of the D&RGW Railroad Co., all being in Section 27, township 1 South, Range 1 West, Ute Meridian, Mesa County, Colo., containing 47.71 acres of land, more or less; and that portion of the NW¼ of the SW¼ of Section 26, Township 1 South, Range 1 West, Ute Meridian Mesa County, Colo., lying between the fenced right-of-way of the D&RGW Railroad and the Gunnison River, containing approximately 0.91 acres of land; together with the private railroad spur thereon, and all rights appurtenant thereto, also all water and water rights used thereon or appurtenant thereto, including the private line from the artesian well, and all rights in connection therewith, and all buildings and improvements thereon.

Component Development and Integration Facility

A tract of land located in the north half of Section 18, Township 2 North, Range 7 West, Montana Principal Meridian, County of Silver Bow, State of Montana, more particularly described as follows:

Beginning at the point of intersection of the north boundary of said Section 18, Township 2 North, Range 7 West, M.P.M., and the west boundary of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railway and running thence South 89°23' West along the north boundary of said Section 18 a distance of 2,064.88 feet; thence South a distance of 1,223.5 feet; thence North 89°23' East a

distance of 1,741.80 feet to a point in the west boundary of the C.M. St. P. Ry. right-of-way; thence North 14°35' East along said right-of-way boundary a distance of 1,265.25 feet to the place of beginning containing 53.15 acres, more or less.

Willow Creek Building

Tract 1: Lot 1, Block 1, KEEFER OFFICE PARK ADDITION, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

Tract 2: That part of Lot 2, lying South of the Railroad right of way, Section 12, Township 2 North, Range 37 East, Boise Meridian, Bonneville County, Idaho.

DOE Headquarters Building

Lot 1, Block 1, of the DOE Addition to the City of Idaho Falls, Idaho.

Technical Sciences Building A

All of Lot 2 Block 3 of the Hatch-Grandview Subdivision, Division No. 3 to the City of Idaho Falls, Idaho, and a portion of Lot 1 Block 3 of said Subdivision, described as follows:

Beginning at the N.W. Corner of Lot 1, Block 3 of the Hatch-Grandview Subdivision, Division No. 3 to the City of Idaho Falls, Idaho, and running thence S 0°34'14" W 248.60 feet to the S.W. Corner of said Lot 1, said corner being a point on a curve with the radius of 703.39 feet and a chord that bears S 86°53'47" E 64.22 feet; thence to the left along said curve 64.24 feet; thence N 0°34'14" E 251.44 feet, parallel to, and 10 feet West of an existing building; thence N 89°25'46" W 64.16 feet to the point of beginning, containing 16,072 square feet.

Technical Sciences Building B

Three tracts of real property described as Lot 7 of Block 2, Lot 1 of Block 3, and Lot 2 of Block 3 in the Hatch-Grandview Subdivision Division No. 3 to the City of Idaho Falls, Bonneville County, Idaho, within the SW ¼ of Section 13, Township 2 North, Range 37 East Boise Meridian.

Warehouse Space in Idaho Falls, Idaho

A 41,850 square foot portion of the entire Lessor property of approximately 10 acres, located in Lot 4, Block 1, Growth Center Addition, Division No. 1, situated in the City of Idaho Falls, Bonneville County, State of Idaho, comprising 15,500 square feet of floor space, 910 square feet of loading dock, a railroad spur, and 25,440 square feet of paved and unpaved loading and parking area.

DOE Vehicle/Bus Parking Facilities:

Idaho Falls Bus Parking Facility

The South 160.41 feet of Lot 8 and all of Lots 9 through 13, Block 1 of the Chaffin Addition, Division No. 2, to the City of Idaho Falls, Idaho, with improvements as cited in EG&G Specification A-EXS-40031, Revision B.

Technical Sciences Building Parking Facility

Beginning at the northeast corner of Lot 1A, Block 2, in Division 4 of the Idaho Falls Airport Industrial Park, City of Idaho Falls, Bonneville County, Idaho; thence proceeding west along the north property line a distance of approximately 180 feet, thence south in a direction parallel to the west property line until intersection with the south property line is reached, thence east along the south property line to the southeast corner, thence north to the point of beginning, containing approximately .83 acres.

Arco Bus Parking Facility

Excluding that portion of land upon which the Golden West Cafe is situated, Tract No. 10, commencing at a point 1644.85 feet South 89°54' West and 881.72 feet North 0°01' East of the S¼ corner of Section 31, Township 4 North, Range 27 East, Boise Meridian, Butte County, Idaho, to the point of beginning; continuing thence North 89°54' East 526.80 feet, thence South 0°01' West 206.72 feet to the point of beginning, together with any and all options, rights and appurtenances thereunder and extensions and renewals thereof.

Highway 20, Bonneville County, Vehicle Parking Facility

From the N. W. Corner of Section 22 Township 2 North, Range 37 East, Boise Meridian, there is a highway marker 30' East and 36' South. From that highway marker the plot will run South 0°21' for a distance of two hundred twenty feet; then east 90°21' for a distance of fifty feet; then North 0°–21' for a distance of two hundred twenty feet; then West 89°39' a distance of fifty feet, along with rights of ingress and egress to and from said above described tract, more particularly described as follows:

Beginning at a point which is 33 feet south 0°21' west of the NW corner of Section 22, Township 2 North, Range 37 East, Boise Meridian, said point of beginning being coincident with the west section line of said Section 22, thence running south 0°21' west along the west section line of said Section 22 a distance of 284 feet; thence turning and running N 59°11' East a distance of 79 feet more or less, to the west meander line of the Great Western Canal; thence continuing along said meander line N 7°42' east a distance of 92.9 feet; thence N 47°25' east a distance of 87.3 feet; thence N 15°42' east a distance of 95 feet more or less to the south right-of-way line of the Shelley New Sweden Road; thence turning and running along said south right-of-way line N 89°39' west a distance of 16.5 feet more or less to the point of beginning, containing a calculated area of .767 acres more or less.

Blackfoot Vehicle Parking Facility

A parcel of land situated in Bingham County, Idaho, being a portion of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian, described as follows, to-wit:

Commencing at the Southwest corner of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian; thence South 89°19'47" East along the South line of said SE¼ NW¼, a distance of 30.0 feet, more or less, to a point in the Easterly right of way line of existing Groveland Road; thence North 0°23'07" East (shown of record to be North) along said existing Easterly right of way line 429.75 feet to the REAL POINT OF BEGINNING; thence East 435.7 feet; thence North 220.0 feet; thence West 435.0 feet, more or less, to a point in said existing Easterly right of way line; thence Southerly along said existing Easterly right of way line 220.0 feet, more or less, to the REAL POINT OF BEGINNING.

The area above described contains approximately 2.20 acres.

Mackay Bus Parking Facility

Lots 22, 23 and 24, Block 10, City of Mackay, Idaho Original Townsite, according to the official plat thereof on file with the Custer County, Idaho, Recorder.

Shelley Bus Parking Facility

The North 176 feet of Lot 3, of the re-plat of Block 19, of the City of Shelley, Bingham County, Idaho, together with rights of ingress and egress thereto.

Rexburg Bus Parking Facility

Beginning 37½ feet South of the N.W. corner of Lot 3, Bock 33 of the Original Rexburg Townsite; thence running South 127½ feet to the Alley right-of-way; thence East 10 Rods; thence North 10 Rods; thence West 65 feet; thence South 37½ feet; thence West 100 feet to the point of beginning. Said parcel being in Madison County, State of Idaho.

Rigby Bus Parking Facility

Beginning at a point 90 feet North and 1,064 feet West of the Southeast corner of the Southeast quarter of Section 13, Township 4 North, Range 38 East, Boise Meridian, of Rigby, Jefferson County, State of Idaho, and running thence West 160 feet; thence North 160 feet; thence East 160 feet; thence South 160 feet to the point of beginning, together with rights of ingress and egress to and from said tract.

Pocatello Bus Parking Facility

Lots 16 and 17, in Block 2 of the Palmer Tracts, which is part of the subdivision of the northwest quarter of the Southeast quarter, Section 6, Township 7 South, Range 35 East, Boise Meridian, less the Northeast 190 feet by 62 feet of Lot 17. Said parcel being in the City of Pocatello, Bannock County, State of Idaho.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and the penalties of 10 CFR 860.5 are being posted at all entrances of the above-referenced areas and at intervals along their perimeters, as provided in 10 CFR 860.6.

Date: July 18, 1988.

William L. Barker,

Acting Executive Assistant for Defense Programs, Department of Energy.

[FR Doc. 88-17742 Filed 8-4-88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is here by given of a

proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (UERATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the retransfer of 85 unirradiated research reactor fuel elements from the J.W. Goethe University in the Federal Republic of Germany to the Institute Jozef Stefan, for use in the TRIGA reactor in Yugoslavia. The fuel elements contain 23.483 kilograms of uranium enriched to approximately 19.78 percent in the isotope uranium-235. Retransfer document number RTD/IAEA(EU)-18, has been assigned to this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 22, 1988.

Date: August 2, 1988.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-17741 File 8-4-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2597-011, et al.]

Hydroelectric Applications Filed with the Commission; Connecticut Light and Power Co. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2597-011.

c. Date Filed: June 27, 1988.

d. Applicant: Connecticut Light and Power Company.

e. Name of Project: Falls Village Project.

f. Location: On the Housatonic River in Litchfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Robert P. Wax, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270, (203) 665-3838.

i. FERC Contact: Steven H. Rossi—(202) 376-9814.

j. Comment Date: September 21, 1988.

k. Description of Project: The applicant proposes to amend its license by deleting the Generating Unit No. 4 development amendment to its license.

The Generating Unit No. 4 would have consisted of: (1) A new intake structure on the existing canal forebay at elevation 602 feet msl; (2) a 9-foot-diameter, 300-foot-long steel penstock; (3) a concrete powerhouse containing a single 6,000-kW generating unit at a rated head of 90 feet, connected to the existing 7,500-kVA transformer; and (4) appurtenant facilities.

The applicant states that this development is economically infeasible at this time.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2 a. Type of Application: Major License.

b. Project No.: 10468-000.

c. Date filed: September 4, 1987.

d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation.

e. Name of Project: Marsh Valley.

f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon. T.9S., R.37E., Section 20, Boise Meridan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ted S. Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID, 83401 (208) 522-8069. Randall C. Budge, Attorney at Law, Center Plaza, Corner First & Center, Pacatello, ID 83204.

i. FERC Contact: Ms. Deborah Frazier-Stutely.

j. Comment Date: August 31, 1988.

k. Competing Application: Project No. 10242-000 Date Filed: January 12, 1987.

l. Description of Project: The proposed run-of-river project would consist of: (1) An existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into; (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities.

m. Purpose of Project: Project power will be sold to Utah Power & Light Company.

n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Minor License.

b. Project No.: 10505-000.

c. Date filed: November 16, 1987.

d. Applicant: Graeagle Land and Water Company.

e. Name of Project: Graeagle Golf Course Water Power Project.

f. Location: On Frazier Creek in Plumas County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Daniel West, Graeagle Land & Water Co., Inc., P.O. Box 68, Graeagle, California 96103. Phone: (916) 836-2523.

i. FERC Contact: Mr. Nanzo T. Coley—Phone: (202) 376-9416.

j. Comment Date: September 21, 1988.

k. Description of Project: The proposed project would be located on lands owned by the Graeagle Land and Water Company. The proposed project would consist of: (1) An existing conduit diversion facility that diverts water from Frazier Creek to an existing 16-inch-diameter conduit that is 4,844 feet long and connected to an existing 12-inch-diameter conduit that is 608 feet long; (2) a proposed variable diameter penstock that would connect to the existing 12-inch penstock, which is used to irrigate the Graeagle Golf Course; (3) a proposed powerhouse containing one generating unit rated at 90-kW; (4) a proposed tailrace, approximately 25 feet long; (5) a proposed electrical tap into the existing 12.5-kV underground cable located adjacent to the powerhouse; and (6) appurtenant facilities.

l. Purpose of Project: Power produced at the project would be sold to Plumas Sierra Rural Electric Coorporative.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 10580-000.

c. Date filed: April 22, 1988.

d. Applicant: Heitmann & Tine Associates.

e. Name of Project: Pow Wow River Project.

f. Location: On the Pow Wow River in Essex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Mr. Sebastian D. Tine, Heitmann & Tine Associates 252 Pleasant Street, Methuen, MA 01844 (617) 475–1186.

i. FERC Contact: Steven H. Rossi (202) 376–9814.

j. Comment Date: September 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 40-foot-long concrete gravity dam; (2) a reservoir with a surface area of 30 acres, no storage capacity, and a normal water surface elevation of 87 feet m.s.l.; (3) an existing intake structure; (4) an existing 6-foot-diameter, 600-foot-long concrete penstock; (5) a new powerhouse containing three generating units with a capacity of 100 kW each for a total installed capacity of 300 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 1,500,000 kWh. The existing dam is owned by the Town of Amesbury, Massachusetts. The applicant estimates that the cost of the studies under permit would be $7,800.

l. Purpose of Project: Project power would be sold to the Massachusetts Electric Company.

m. This notice also consists of the following stndard paragraphs: A5, A7, A9, A10, B, C, & D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10613–000.

c. Date Filed: June 1, 1988.

d. Applicant: Lower Patterson, Inc.

e. Name of Project: Upper Teton River Hydroelectric Project.

f. Location: On the Teton River, near the town of Felt, in Teton County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Richard L. Graves, 2082 South 2000 East, Gooding, ID 83330 (208) 536–5461.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: September 21, 1988.

k. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 5,788 feet msl; (2) an 86-inch-diameter, 12,200-foot-long penstock leading to; (3) a powerhouse at elevation 5,630 feet msl containing 2 generating units with a combined capacity of 4,500 kW; (4) a tailrace; and (5) a 9,300-foot-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 24,750 MWh. The approximate cost of the studies under the permit would be $50,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10621–000.

c. Date Filed: June 23, 1988.

d. Applicant: Hydro Investors Inc.

e. Name of Project: Madrid Project.

f. Location: On the Grass River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Neal F. Dunlevy, 185 Genesee Street, Suite 1518, Utica, NY 13501 (315) 793–0366.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: September 23, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 250-foot-long concrete and stone masonry gravity dam; (2) a reservoir with a surface area of 100 acres, a storage capacity of 880 acre-feet, and a normal water surface elevation of 255 feet m.s.l.; (3) a new concrete intake structure; (4) a new powerhouse containing, (a) one generating unit with a capacity of 770 kW, or (b) two generating units with a capacity of 350 kW each for a total installed capacity of 700 kW; (5) a new transmission line, 200 feet long; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 3,200,000 kWh. The existing dam is owned by the Town of Madrid, New York. The applicant estimates that the cost of the studies under permit would be $21,000.

l. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: P–10619–000.

c. Date Filed: June 21, 1988.

d. Applicant: Cuyahoga Falls Hydro Associates.

e. Name of Project: Cuyahoga Falls Hydro Project.

f. Location: On the Cuyahoga River near Akron, Summit County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Dominique Darne, 1900 L Street NW., Suite 608, Washington, DC 20036, (202) 775–4692.

i. FERC Contact: Ed Lee at (202) 376–5786.

j. Current Date: September 23, 1988.

k. Description of Project: The proposed run-of-river project consists of: (1) An existing Gorge Dam approximately 440 feet long and 57 feet high; (2) a 48-acre reservoir; (3) a proposed steel penstock approximately 3,000 feet long; (4) a new concrete powerhouse housing two 2.75-MW generators for a total installed capacity of 5.5 MW and an average annual generation of 24,000 MWh; (5) a new tailrace; (6) a new 600-foot-long, 12.3-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the cost of the work to be performed under the preliminary permit would be $100,000. The dam and reservoir are owned by Ohio Edison Company, 76 South Main Street, Akron, Ohio.

l. Purpose of Project: The Applicant's generated power would be sold to a nearby local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Transfer of License.

b. Project No.: 2416–006.

c. Date Filed: July 7, 1988.

d. Applicant: Riegel Power Corporation and Aquenergy Systems, Inc.

e. Name of Project: Ware Shoals Project.

f. Location: On the Saluda River in Laurens County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ralph H. Walker, Riegel Power Corporation, Post Office Box 512, Greenville, SC 29602, (803) 233–8567.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: September 9, 1988.

k. Description of Transfer: On July 7, 1988, Riegel Power Corporation (licensee) and Aquenergy Systems, Inc. (transferee) filed a joint application for transfer of a major license for the Ware Shoals Project No. 2416.

The purpose of the proposed transfer of license is to consolidate both companies to eliminate operation and maintenance costs. Both companies are owned by the same nine stockholders.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

9 a. Type of Application: Minor license.

b. Project No.: 8291–003.

c. Date filed: September 30, 1987.

d. Applicant: North Star Hydro Limited.

e. Name of Project: North Star.

f. Location: On Little Walker River in Mono County, California T6N, R23E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, CA 95814.

i. FERC Contact: Mr. William R. Roy-Harrison, (202) 376–9830.

j. Comment Date: September 26, 1988.

k. Description of Project: The proposed project consists of: (1) A 6-foot-high, 50-foot-long diversion structure at elevation 6,830 feet msl; (2) a 48-inch-diameter, 6,700-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 1,400-kw; (4) a 1.6-mile-long, 12.5 kV transmission line tying into the existing California Edison Company line; and (5) appurtenant facilities. The applicant estimates a 3.9 million kwh average annual energy production.

l. Purpose of Project: Power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10 a. Type of Application: Declaration of Intention.

b. Project No.: EL88–26–000.

c. Date filed: May 13, 1988.

d. Applicant: City of Arlington (TX).

e. Name of Project: South West Water Treatment Plant.

f. Location: Cedar & Richland-Chambers Creeks, Tarrant County, Texas.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: A. William Veselka, P.E., Veselka Engineering Consultants, Inc., 202 East Border Street, Border Centre, Suite 300, Arlington, TX 76010, (817) 469–1671.

i. FERC Contact: Hank Ecton, (202) 376–9073.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed South West Water Treatment Plant would consist of: (1) A 60-Inch, 11,400-foot-long concrete pressure pipeline, connected with two parallel pipelines which carry water from Cedar Creek and Richland-Chambers Creek Reservoirs; (2) a proposed powerhouse containing one vertical turbine/generator with provisions for installation of a second identical unit, each generating 260 kilowatts (kW); and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To utilize the flow and available head from a 60-inch raw water pipeline to produce a maximum of 280 kW, to supply 20 percent of the energy requirements of a water treatment plant. All generated electricity will be used on site.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: Declaration of Intention.

b. Project No: EL88–28.

c. Date Filed: 03/14/88.

d. Applicant: Pennsylvania Gas & Water Company (PG&W).

e. Name of Project: Mill St. Regulating & Pumping Station.

f. Location: In the interior piping of the transmission/distribution system of a public water supply facility, Borough of Dunmore, Pennsylvania.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: James L. Long, Pennsylvania Gas & Water Company, Wilkes-Barre Center Bldg., 39 Public Square, Wilkes-Barre, PA 18711 (717) 829–8778.

i. FERC Contact: Diane M. Scire, (202) 376–1758.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed project would consist of a small hydropower generating unit with a capacity of less than 175 kilowatts. Considerable energy dissipated in the pressure reduction would be used to generate power and operate the pumping equipment.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To generate power to operate the pumping equipment within the regulating and pumping station, which is an integral facility of PG&W's water supply system. No power generated will be sold to the local utility, Pennsylvania Power & Light Company, or to anyone else.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: Declaration of Intention.

b. Project No: EL88–33–000.

c. Date Filed: June 1, 1988.

d. Applicant: Bill Dean.

e. Name of Project: Little Muddy Creek Project.

f. Location: Little Muddy Creek, Pend Oreille County, Washington.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Bill Dean, Post Office Box 512, Ione, WA 99139 (509) 442–3389.

i. FERC Contact: Hank Ecton, (202) 376–9073.

j. Comment Date: September 7, 1988.

k. Description of Project: The proposed Little Muddy Creek Project would consist of: (1) A 6–inch, 1000-foot-long pipeline; (2) a turbine with a capacity of 300–400 watts; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating

capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To divert water from the Little Muddy Creek, using a 6-inch, 1000-foot-long pipeline connected with a turbine, to generate between 300–400 watts of electricity. The project will not be interconnected, and the power generated will be used on site.

m. This notice also consists of the following standard paragraphs: B, C, D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10581–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: San Antonio Reservoir/Dam Power Project.

f. Location: On the San Antonio River in Monterey County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3674.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing San Antonio dam is owned by the Monterey County Flood Control and Water Conservation District. The proposed project would consist of: (1) An existing 198-foot-high by 1,432-foot-long dam; (2) an existing reservoir with a surface area of 5,720 acres and a storage capacity of 350,000 acre-feet at elevation 780 feet m.s.l.; (3) an existing 1,300-foot-long by 7-foot-diameter penstock; (4) a proposed powerhouse containing one generating unit rated at 24 MW; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 12,640,000 KWH. The applicant estimates that the cost for the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10582–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Calero Reservoir/Dam Power Project.

f. Location: On Calero Reservoir in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3574.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Calero dam is owned by the Santa Clara Valley Water District. The proposed project would consist of three parts. Part 1 would consist of: (1) An existing 98-foot-high dam; (2) an existing reservoir with a surface area of 347 acres and a storage capacity of 10,054 acre-feet at elevation 485 m.s.l.; (3) an existing 481-foot-long by 36-inch-diameter penstock; (4) a proposed powerhouse containing generating units with a total rated capacity of 600 KW and connecting to the Alameden Valley pipeline; and (5) a proposed transmission line. Part 2 would consist of: (1) the existing Cross Valley pipeline outlet; (2) a proposed powerhouse, connected to the Cross Valley pipeline outlet, containing one generating unit rated at 400 KW and connecting to the proposed Calero pipeline or emptying into the Calero reservoir; and (3) a proposed transmission line.

Part 3 would consist of: (1) The existing outlet conduit at McKean Road; (2) a proposed powerhouse, that would be connected to the existing McKean Road conduit, containing one generating unit rated at 400 KW; (3) a proposed tailrace; and (4) a proposed transmission line. The estimated average annual energy output for part 1 is 5,000,000 KWH, and for parts 2 and 3 is 3,500,000 KWH. The applicant estimated the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at each project entity would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15. a. Type of Application: Preliminary Permit.

b. Project No: 10583–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Uvas Reservoir/Dam Power Project.

f. Location: On Uvas Creek in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact Person: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025 (415) 854–3574.

i. FERC Contact: Nanzo T. Coley (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Uvas dam is owned by the Gavillian Water Conservation District and the Santa Clara Valley Water District. The proposed project would consist of: (1) An existing 118-foot-high dam; (2) an existing reservoir with a surface area of 286 acres and a storage capacity of 10,000 acre-foot at elevation 496 feet m.s.l.; (3) an existing 500-foot-long by 36-inch-diameter penstock with three outlet pipe connections; (4) a proposed powerhouse containing generation units with a total installed capacity of 400 WK, with the turbines connected to the outlet pipes; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 3,500,000 KWH. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A10, A19, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 10584–000.

c. Date Filed: April 25, 1988.

d. Applicant: Pacific Water and Power.

e. Name of Project: Lexington Reservoir/Dam Power Project.

f. Location: Los Gatos Creek in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, California 94025, (415) 854–3574.

i. FERC Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: September 28, 1988.

k. Description of Project: The existing Lexington dam is owned by the Santa Clara Valley Water District. The proposed project would consist of: (1) An existing 165-foot-high dam; (2) an existing reservoir with a surface area of 404 acres and a storage capacity of 20,250 acre-feet at elevation 665 feet m.s.l.; (3) an existing 1,314-foot-long by 50-inch-diameter bifurcated penstock; (4) a proposed powerhouse containing generating units, connected to the existing penstocks, with a total rated capacity of 1,000 kw; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the project is 8,760,000 kwh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. Purpose of Project: Energy produced at the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Transfer of License.

b. Project No.: 7242–010.

c. Date filed: June 2, 1988.

d. Applicants: Richard D. Spight (licensee), and STS Hydropower Ltd. (transferee).

e. Name of Project: Kanaka.

f. Location: On Sucker Run, a tributary of the South Fork Feather River (Oroville Reservoir), near Feather Falls, in Butte County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a) — 825(r).

h. Applicant Contacts: Mr. Richard D. Spight, P.O. Box 629, Orinda, CA 94563. Mr. Peter J. Bulandr, Vice President, STS Hydropower Ltd., 111 Pfingsten Road, Northbrook, IL 60062.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. Comment Date: September 6, 1988.

k. Description of Transfer: On August 15, 1985, a minor license was issued to Television Communications, Inc. for the construction, operation, and maintenance of the Kanaka Project No. 7242, but later transferred to Mr. Richard D. Spight, August 27, 1987. Mr. Richard D. Spight has proposed to transfer the license to STS Hydropower Ltd.

The transferee is a private corporation organized under the laws of the state of Michigan, and domesticated in the state of Illinois.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound by them to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts

must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 2, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17739 Filed 8-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-570-000 [1]]

Mobile Bay Pipeline Projects; Deadline for 1989-1990 Certification of Mobile Bay Construction Applications

August 1, 1988.

The Commission has received several applications to construct and operate pipeline facilities to move gas out of the Mobile Bay area. These applications propose construction and operation of major new pipeline facilities and the transportation of large quantities of natural gas out of the Mobile Bay area. Applications have been filed by Citrus Interstate Pipeline Company in Docket No. CP87-415-000, Sunshine Natural Gas System in Docket No. CP87-513-000, Gateway Pipeline Company in Docket No. CP88-393-000, and Tennessee Gas Pipeline Company in Docket No. CP88-437-000. All these facilities would begin and end onshore, downstream of processing plants to be installed by others.

Proven and probable dry gas reserves for the Mobile Bay area are estimated to be approximately 5.4 Tcf. Presently, the only pertinent pipeline in the offshore area that can bring gas onshore was constructed by Mobil Oil Company (Mobil) to carry Mobil's gas from its Mobile Bay production area to the Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI), processing plant, which is in Mobile County, Alabama. This plant currently has a capacity of approximately 80 MMcfd. Each pipeline proposed in these applications would interconnect with the MOEPSI processing plant and/or one of two planned processing plants.

Our primary concern here is to establish a means to process the applications for pipeline construction in the Mobile Bay area in an orderly manner such that we can assure the present applicants listed above, as well as any other pertinent applicants who file timely, complete applications, that certification for their proposed projects will issue, no later than the end of 1990 if the proposals are found to be in the public convenience and necessity. Accordingly, we announced today that the deadline for the filing of applications to construct and operate pipeline facilities for transportation of natural gas out of the Mobile Bay area, where certification for such construction is necessary or desirable no later than the end of calendar year 1990, is December 30, 1988. The Mobile Bay area referred to herein is defined by a line starting at a point located at the Mississippi/Louisiana state line, at the coast, extending in a southeasterly direction to a point 88°00′ W longitude and 29°20′ N latitude and extending in an easterly direction to a point 87°00′ W longitude and 29°20′ N latitude and extending north along the 87°00′ W longitude to the coast of Florida.

Each application presently on file, as well as each new application and amendment thereto which is pertinent to this notice, must be filed and *complete* between now and December 30, 1988, if the certification process is reasonably expected to be completed during 1989-90, and no later than the end of 1990. Each application or amendment thereto on file at the Commission as of the stated deadline which is *complete*, in compliance with the Commission's regulations, and ripe for decision will be processed and a certificate issued, if at all, no later than the end of 1990 if the proposal is found to be in the public convenience and necessity.[2] Applications that are filed or amended after December 30, 1988, will be considered applications for post-1990 certification. This notice is not intended to inhibit or discourage applications for certification of pipeline construction where any certification is not required before the end of 1990.

It must be emphasized that all applications must fully comply with the requirements for applications as set forth in the Commission's regulations, including a *complete* and fully supported set of exhibits, as required under 18 CFR 157.6, for certification no later than the end of 1990. Persons who need to supplement or amend previously filed pertinent applications must do so not later than December 30, 1988, in order to comply with these requirements.

The Commission intends to act efficiently and expeditiously in deciding whether the need for new facilities exists and, if so, what new facilities should be certificated to meet such needs. Consequently, the procedures outlined in this notice provide an efficient, rational and legal procedure to ensure that any needed pipeline construction where certification is required in 1989-90 for transportation of Mobile Bay area natural gas can be considered in a timely way.

Administrative Procedures

Pursuant to Rule 713(a)(2)(v) of our Rules of Practice and Procedure [18 CFR 385.713(a)(2)(v)], this notice is designated as a final decision of the Commission for the purpose of receiving requests for rehearing filed pursuant to section 19(a) of the Natural Gas Act.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17647 Filed 8-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-009]

Northwest Pipeline Corp.; Filing

August 1, 1988.

Take notice that on July 25, 1988, Northwest Pipeline Corporation (Northwest) filed Corrected Substitute Ninth Revised Sheet No. 2-A and Corrected Substitute Third Revised Sheet No. 2-A.1 to be a part of its FERC

[1] This docket number designation is applicable to this notice and any requests for rehearing of this notice. Applications for authority to provide new gas service out of the Mobile Bay area filed in response to this notice will be identified by future docket numbers assigned at the time of filing.

[2] Following *Ashbacker Radio Corporation v. F.C.C.*, 326 U.S. 327 (1945), the Commission will establish a comparative evidentiary hearing in the event that it has before it at one time two or more mutually exclusive applications in which issues of material fact are in dispute.

Gas Tariff, Original Volume No 2, proposed to be effective July 3, 1988.

Northwest states that the purpose of this filing is to correct certain of its "X" rate schedules that were inadvertently included under the heading "Interruptible Transportation" and to correct certain other editorial errors. Northwest requests that these tariff sheets be substituted for those contained in its July 18, 1988 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17648 Filed 8-4-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3425-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 25, 1988 Through July 29, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880241, Final, BOP, TX, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX, Due: September 6, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880242, Draft, FHW, NY, NY-290 Relocation, Butternut Interchange (I-481/ I-690) to Manlius Center, Funding and 404 Permit, Towns of DeWitt and Manlius, Onondaga County, NY, Due: September 19, 1988, Contact: Harold Brown (518) 472-3616.

EIS No. 880243, F Suppl, FHW, SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC, Due: September 6, 1988, Contact: William Rice (803) 765-5411.

EIS No. 880244, Draft, OSM, MT, Peabody Big Sky Coal Mine-Area B Expanded Operations Project, Plan Approval, Lee Coulee Drainge, Rosebud County, MT, Due: September 26, 1988, Contact: Floyd McMullen (303) 844-3104.

EIS No. 880245, Final, COE, ND, Baldhill Dam and Lake Ashtabula Reservoir, Dam Safety Protection Plan, Implementation, Sheyenne River, Valley City, Barnes County, ND, Due: September 6, 1988, Contact: Gary Palesh (612) 725-7746.

Dated: August 2, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-17727 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3524-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 18, 1988 through July 22, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-AFS-K65117-CA, Rating EC2, South Fork Fire Recovery and Salvage Project, August through October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity National Forest, Trinity County, CA. **SUMMARY:** EPA expressed environmental concerns about potential adverse water quality impacts of the preferred alternative on the South Fork Roadless Area's Watershed, and the lack of specific mitigation measures.

ERP No. D-BLM-K65116-CA, Rating EC2, Arcata Planning Area, Land and Resource Management Plan, Implementation, Humboldt, Mendocino, Trinity and Sonoma Counties, CA. **SUMMARY:** EPA is concerned with potential adverse impacts to water quality and beneficial uses caused by multiple use activities such as timber logging, and potential adverse impacts of herbicides use on surface water, ground water, and beneficial uses.

ERP No. D-FHW-L40166-OR, Rating EC2, Tualatin-Sherwood/Edy Road Improvements, I-5 to OR-99W, Funding and 404 Permit, Washington County, OR. **SUMMARY:** EPA's concerns with this document are based on potential water quality effects from indirect development.

ERP No. D-NPS-L61172-AK, Rating EC2, Lake Clark National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA is concerned about the potential for degradation of park/ preserve resources and the lack of information on the project-specific evaluation process. EPA recommends that additional information is needed and a summary of the General Management Plan should be included in the final EIS as this plan outlines how non-wilderness lands will be managed.

ERP No. D-NPS-L61173-AK, Rating LO, Gates of the Arctic National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the project as described.

ERP No. D-NPS-L61174-AK, Rating LO, Wrangell-St. Elias National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the project as described.

ERP No. D-SCS-H36100-MO, Rating LO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO. **SUMMARY:** EPA has no ojbections to the project as proposed.

(Note: The above summary should have appeared in the 7-29-88 FR Notice.)

ERP No. D-SCS-K31012-NV, Rating EC2, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV. **SUMMARY:** EPA is concerned because the proposed project fails to comply with the section 404(b)(1) Guidelines of the Clean Water Act. EPA is further concerned with the effects of the recommended alternative's increased sediment loading on the watershed's water quality and wetlands.

ERP No. DS-SFW-L64024-AK, Rating LO, Kenai National Wildlife Refuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula

Borough, AK. **SUMMARY:** EPA has no objections to the project as proposed.

Final EISs

ERP No. F-FHW-L40156-OR, US 101/ Oregon Coast Highway Improvements, Rouge River Bridge to Gold Beach, Funding, Curry County, OR. **SUMMARY:** Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

(Note: The above summary should have appeared in the 7-29-88 FR Notice.)

ERP No. FS-IBR-J28002-CO, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, Implemenation and 404 Permit, Summit, Grand and Eagle Counties, CO. **SUMMARY:** EPA found the changes in heavy metals identified for Ten Mile Creek to be significant. This, however, appears to be an error in the data and the Bureau of Reclamation has agreed to supply EPA with corrected information. The Bureau agrees with EPA's recommendation that the Record of Decision should contain definitive procedures relative to NEPA requirements in the water supply contracts.

Regulations

ERP No. R-COE-A39133-00, 36 CFR Part 327; Shoreline Management at Civil Works Projects (53 FR 21495). **SUMMARY:** EPA expressed concern regarding the lack of specific requirement for National Environmental Policy Act document preparation prior to issuance of shoreline management plans or shoreline use permits. EPA requested that shoreline management plans and permits be reviewed after a specified time rather than periodically. EPA suggested measures to reduce environmental impacts of shoreline use.

Dated: August 2, 1988.

Wiliam D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-17728 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3422-3]

Intent To Prepare an Environmental Impact Statement; Designation of an Ocean Disposal Site for Dredged Material Unacceptable for Disposal at the New York Bight "Mud Dump" Site

AGENCY: U.S. Environmental Protection Agency—Region II.

ACTION: Preparation of an Environmental Impact Statement on the Designation of an Ocean Disposal Site for Dredged Material Unacceptable for Disposal at the New York Bight "Mud Dump" Site.

Purpose: In accordance with the Environmental Protection Agency's (EPA) procedures for voluntary preparation of environmental impact statements (EIS) on significant regulatory actions (39 FR 37119, October 21, 1974), and in compliance with section 211 of the Water Resources Development Act (WRDA) of 1986. This notice of intent (NOI) is issued pursuant to 40 CFR 1501.7, section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Verhaar, Environmental Impacts Branch, U.S. Environmental Protection Agency—Region II, 26 Federal Plaza, Room 500, New York, New York 10278, Telephone (212/FTS) 264-6720.

SUMMARY:

Description of Proposed Action

Need For Action: Under section 211 of the WRDA, the Administrator of EPA is required to designate one or more ocean disposal sites in accordance with the MPRSA for the disposal of dredged material unacceptable for disposal at the present Mud Dump site. The WRDA stipulates that the designated site will be located not less than twenty (20) miles from the shoreline and that, no later than thirty (30) days after the site is designated, all disposal of dredged material other than acceptable dredged material will take place at the newly designated site(s).

The EPA action is to evaluate the beneficial and adverse environmental impacts associated with the designation of a site(s) for ocean disposal of dredged material unacceptable for disposal at the Mud Dump site.

It should be emphasized that, if an ocean disposal site(s) is designated for dredged material, such a site designation would not constitute or imply the U.S. Army Corps of Engineers' (COE) or EPA's permit approval of the actual disposal of dredged material at the respective site(s). It would remain the responsibility of each potential user to demonstrate compliance with EPA's marine environmental impact criteria in order to receive a permit from the COE under the MPRSA, independent of the EIS recommendations.

To minimize duplication of effort and reduce paperwork while assuring a thorough examination of all reasonable alternatives, the EPA has entered into a cooperative agreement with the Army Corps of Engineers for the preparation of this EIS.

Alternatives: No-action (the no-action alternative is defined as not designating a site for the disposal of dredged material which is unacceptable for disposal at the Mud Dump site), use of alternative ocean disposal sites.

Scoping: As part of the EIS scoping process, written comments on the proposed scope (e.g., issues, alternatives to be addressed) of the EIS will be accepted until September 23, 1988. All comments should be addressed to Chief, Environmental Impacts Branch at the above address. Formal scoping meetings, as defined in the regulations of the Council on Environmental Quality (40 CFR 1501.7), will be held as follows:

Wednesday, September 14, 1988

Long Branch Municipal Building, Council Chamber, 344 Broadway, Long Branch, New Jersey 07740.

Thursday, September 15, 1988

William H. Rogers Legislative Building, Veterans Memorial Highway, Hauppauge, New York 11788.

The meetings will be held in two (2) sessions starting at 2:00 p.m., with the second session starting at 6:00 p.m. after a one hour recess.

Public Participation: Full public participation by interested federal, state, and local agencies, as well as other interested organizations and the general public, is invited. All interested parties are encouraged to submit their names and addresses to the contact person indicated above for inclusion on the distribution list for the draft and final EIS and any related public notices.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-17729 Filed 8-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 29, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0344.
Title: Section 1.1705, Method for determining duration of Cuban interference.
Action: Extension.
Respondents: Businesses including small businesses.
Frequency of Response: Recordkeeping and on occasion.
Estimated Annual Burden: 5 Response; 1 Recordkeeper; 45 Hours.
Needs and Uses: Section 1.1705 requires that U.S. applicants (AM stations) for compensation due to facilities changes required to mitigate Cuban interference shall monitor and log signals of interfering Cuban stations for 60 consecutive days and submit the results to the Commission. The data used by FCC staff to assure that a Cuban station has caused objectionable interference within the service area of an AM station.

OMB Number: 3060–0345.
Title: Section 1.1709, Requirements for filing application for compensation.
Action: Extension.
Respondents: Businesses including small businesses.
Frequency of Response: On occasion.
Estimated Annual Burden: 1 Response; 30 Hours.
Needs and Uses: Section 1.1709 requires that U.S. AM radio stations submit an informal application for compensation of expenses incurred in mitigating the effects of Cuban interference and any supplemental information the Commission may request the applicant to file. In order to mitigate the effects from Cuban interference, the application must be accompanied by certain documentation. The informal application and supplemental information is used by FCC staff to assure that compensation to the station is justified.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–17672 Filed 8–4–88; 8:45 am]
BILLING CODE 6712-01-M

Advisory Committee on Advanced Television Service Steering Committee

The third meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 9:00 a.m. on August 10, 1988 in Room 856 at the FCC's offices at 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introductory Remarks—Irwin Dorros.

—Review of Systems Subcommittee charter, organization and operating procedures.

—Description of work flow and transitions from the Planning Subcommittee.

2. Report by Working Party 1 (Systems Analysis)—Birney Dayton.

—Charter and organization.

—Work plan/status.

—Review of ATV systems submitted for consideration.

—Meeting schedule.

3. Report by Working Party 2 (System Evaluation and Testing)—Ben Crutchfield.

—Charter and organization.

—Work plan/status.

—Discussion of availability of ATV testing facilities.

—Discussion of inputs from the Planning Subcommittee, including the availability of ATV test material.

—Meeting schedule.

4. Report by Working Party 3 (Economic Assessment)—Larry Thorpe.

—Charter and organization.

—Work plan/status.

—Meeting schedule.

5. Report by Working Party 4 (System Standard)—Robert Hopkins.

—Charter and organization.

—Work plan/status.

—Meeting schedule.

6. Discussion of plans for February 1, 1989 Interim Report.

7. Subcommittee meeting schedule.

8. Open discussion.

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632–7060.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–17687 Filed 8–4–88; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1742]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 27, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed August 22, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Olive Branch, Mississippi) (MM Docket No. 87–260, RM–5728).

Number of petitions received: 1.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–17671 Filed 8–4–88; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1739]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 15, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed August 22, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1934. (MM Docket No. 84–1296). Number of petitions received: 1.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-17673 Filed 8-4-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011049-003.
Title: Tampa Port Authority .
Parties:

Tampa Port Authority
Seagull Terminal and Stevedoring Company

Synopsis: The agreement extends the lease term of the basic agreement as amended for an additional six months from August 1, 1988 through January 31, 1989.

Agreement No.: 224-200052-002.
Title: Tampa Port Authority Terminal Lease Agreement.
Parties:

Tampa Port Authority
Bay Terminal and Stevedoring Co., Inc.

Synopsis: The agreement extends the term of the basic lease for an additional six month period through January 31, 1989.

Agreement No.: 224-200054-002.
Title: Tampa Port Authority Terminal Lease Agreement.
Parties:

Tampa Port Authority
G & C Stevedoring Co.

Synopsis: The agreement extends the term of the basic lease for an additional six month period through January 31, 1989.

Agreement No.: 224-003934-004.
Title: Palm Beach Terminal Agreement.
Parties:

Port of Palm Beach District (The Port)
Florida Molasses Exchange, Inc. (FME)

Synopsis: Under the proposed agreement, FME agrees that paving or landscaping over certain easements on a portion of land FME leased from the Port shall be at FME's risk and that FME shall be responsible for the cost of replacing any paving or landscaping removed during installation of water utility lines on the easement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 1, 1988.

[FR Doc. 88-17688 Filed 8-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dime Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be availabile 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 August 26, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Dime Financial Corporation,* Wallingford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Dime Savings Bank of Wallingford, Wallingford, Connecticut; 100 percent of the voting shares of City Savings Bank of Meriden, Meriden, Connecticut; and 7.125 percent of the voting shares of Meriden Trust and Safe Deposit Company, Meriden, Connecticut. Dime Savings engages in the underwriting and sales of Connecticut Savings Bank Life Insurance. City Savings acts as an agent for two banks which issue Savings Bank Life Insurance.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.,* Towson, Maryland; to acquire 80 percent of the voting shares of Bay National Bank Annapolis, Maryland.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gore Bronson Bancorp, Inc.,* Northbrook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Palwaukee Bank, Propsect Heights, Illinois.

2. *Pocahontas Bancorporation,* Pocahontas, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of The Pocahontas State Bank, Pocahontas, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Miners Bancshares, Inc.,* Frontenac, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Miners State Bank, Frontenac, Kansas.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Weslaco Bancshares, Inc.,* Weslaco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank, Weslaco, Texas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *1867 Western Financial Corporation,* Stockton, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stockton, Stockton, California.

Board of Governors of the Federal Reserve System, August 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17636 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

First NH Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to acquire Insurance Premium Finance Corporation, Derry, New Hampshire, and thereby engage in financing insurance premiums pursuant to § 225.25(b)(1) (i) and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17637 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp. et al.; Notice of 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 August 19, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Collection Services Corporation, Pittsburgh, Pennsylvania, in permissible loan recovery and collection activities for loans previously held by Applicant's subsidiaries and sold to a liquidating bank pursuant to § 225.25 (b)(1) and (b)(23) of the Board's Regulation Y.

2. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Grant Street National Bank, Pittsburgh, Pennsylvania, which will be a limited purpose *de novo* bank in voluntary liquidation under section 181 of the National Bank Act (12 U.S.C. 181). Applicant is applying pursuant to the provisions of section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8) and §§ 225.25 (b)(1) and (b)(23) of the Federal Reserve Board's Regulation Y (12 CFR 225.25 (b)(1) and (b)(23)) to engage in its proposed activities.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and disability insurance written in connection with extensions of credit in all states by affiliates of Sovran Financial Corporation pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Comments on this application must be received by August 26, 1988.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Findlay Bancshares, Inc.*, Findlay, Illinois; to engage *de novo* through its subsidiary, Findlay Insurance Agency, Findlay, Illinois; in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Comments on this application must be received by August 23, 1988.

Board of Governors of the Federal Reserve System, August 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17638 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

Warburg, Pincus Capital Company, L.P., Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Warburg, Pincus Capital Company, L.P.;* Warburg, Pincus Capital Partners, L.P.; Warburg, Pincus & Co.; E.M. Warburg, Pincus & Co., Inc.; Warburg, Pincus Ventures, Inc.; John L. Vogelstein; and Lionel I. Pincus; to acquire an additional 14.8 of percent of voting shares of Mellon Bank Corporation, Pittsburgh, Pennsylvania, and thereby indirectly acquire Mellon Bank (North), Oil City, Pennsylvania; Mellon Bank, N.A., Pittsburgh, Pennsylvania; Mellon Bank (MD), Bethesda, Maryland; Mellon Bank (East), Philadelphia, Pennsylvania; Mellon Bank (DE), Wilmington, Delaware; Mellon Bank (Central), State College, Pennsylvania; and Commonwealth National Bank, Harrisburg, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James R. Fraser,* Sandy, Utah; to acquire an additional 1.48 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, August 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17639 Filed 8-4-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 29, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Food and Drug Administration

1. Medical Device Good Manufacturing Practice Regulation—0910-0073)–The records required by the GMP regulation are an integral part of an effective quality assurance program for the manufacture of devices and an essential mechanism by which manfacturers maintain control over their process. In order to consistently produce devices conforming to established specifications, controls must be in place. Protection of the public health depends upon the information provided to both industry and FDA by GMP records. Respondents: Business or other for-profit, small business or organizations; Number of respondents: 7,172; Frequency of Response: Every two years; Estimated Annual Burden 201,930 hours.

2. Survey of Japanese Pharmaceutical Firms Regarding New Biotechnology Products—NEW—The collected information will provide the means for FDA to make predictions about future demands for expertise and resources and for U.S. industry to gauge the competitiveness of their Japanese counterparts. The affected public consists solely of the Japanese drug manufacturers who respond. Respondents: ____; Number of Respondents: 100; Fequency of Response: One-time; Estimated Annual Burden: 20 hours.

3. FDA Recall Regulations—0910—Recall guidelines set forth procedures to be used by manufacturers and distributors or other responsible persons in notifying or alerting health professionals or other persons of an unreasonable risk of substantial harm to the public health and describes the procedures used or required by FDA in the recall process. Respondents: Business or other for-profit, Small business or organizations. Number of Respondents: 915; Frequency of Response: On occasion; Estimated Annual Burden: 45,567 hours.

Center for Disease Control

1. Regulation—42 CFR 51b—Venereal Disease Program Grants—0920-0112—This clearance covers the application requirements for grants to States, political subdivisions of States and to any other public and nonprofit private entity for research, demonstrations, public information and education programs for the prevention and control of sexually transmitted diseases. Respondents: State or Local governments, non-profit institutions. Number of Respondents: ____; Frequency of Response: Annual; Estimated Annual Burden: 1 hour.

2. Longitudinal Study on Aging (LSOA)—0920-0219—This study is designed to measure changes in the functional status and living arrangements of older Americans. The baseline data were collected through the Supplement on Aging to the National Health Interview Survey. Respondents: Individuals or households; Number of Respondents: 6,000; Frequency of Response: One time; Estimated Annual Burden: 1,631 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-966-2088 for copies of package)

1. Request for Medicare Payment—Ambulance—0938-0042—This form is completed by the beneficiary and/or the ambulance service, on occasion. It is submitted to the medicare carrier for payment to the ambulance service. Respondents: Business or other for-profit, small business or organizations. Number of Respondents: 26,500; Frequency of Response: 128; Estimated Annual Burden: 544,000 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-966-2088
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the

following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Attn: Shannah Koss-McCallum.

Date: August 2, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88-17787 Filed 8-4-88; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Renewal of Cooperative Agreements To Support State Smoking Cessation in Pregnancy Demonstration and Research Projects; Availability of Funds for Fiscal Year 1988

Introduction

The Center for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 to continue support for Cooperative Agreements with the Colorado Department of Health, the Maryland Department of Health and Mental Hygiene, and the Missouri Department of Health to complete statewide Smoking Cessation in Pregnancy (SCIP) Demonstration and Research Projects. This is not a formal request for applications. Assistance will be provide only to the State Health Departments of Colorado, Maryland, and Missouri for continued support of this project. No other applications are solicited or will be accepted.

Authority: These Cooperative Agreements are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background/Objectives

In September 1986, CDC awarded Cooperative Agreements to the Colorado, Maryland, and Missouri Departments of Health in support of their state SCIP projects. The three States have fully staffed multidisciplinary teams working on the SCIP project. The States have developed the only state-of-the-art intervention strategies and materials developed from the results of focus groups sessions conducted to learn from public prenatal clients what is most helpful to them in quitting and maintaining cessation of smoking. The States have developed and tested the consent and screening forms as well as the questionnaries and have already obtained local health departments' commitments to participate in the study. The three States have also standardized procedures for collecting and shipping urine samples, administering and shipping questionnaries, and editing forms, and they have installed a microcomputer database for tracking patient progress and reporting.

The primary focus of the renewal Cooperative Agreement awards will be to:

1. Integrate the use of the patient education/counseling methoid within intervention public prenatal clinics and WIC (Special Supplemental Feeding Program for Women, Infants, and Children) sites on an ongoing basis using only existing staff to support clients' efforts to quit smoking. These clinics and sites will use only the data management and biochemical testing procedures throughout the study period;

2. Demonstrate the effectiveness of the smoking cessation/maintenance intervention strategy in producing changes in the smoking behavior (i.e., quitting) of patients who use publicly-funded prenatal care on a sustained basis;

3. Evaluate the effect of smoking on the birthweight of babies of women using publicly-funded prenatal care (higher risk patients); and

4. Assess the cost-effectiveness of the intervention as an integral part of prenatal care.

CDC is committed to assisting the States in obtaining the study results in order to (1) assess what proportion of prenatal smokers can be helped to quit smoking and maintain their cessation through intervention; (2) determine what it will cost to integrate cessation/maintenance interventions into routine prenatal care on a sustained basis; (3) measure the effects of smoking cessation on low birthweight for users of public prenatal care, generally higher risk mothers; and (4) evaluate the cost-effectiveness of these efforts.

CDC project activities are:

A. Provide technical assistance and training to assure that State and local staff have the appropriate skills and expertise to complete field testing as appropriate, to complete implementation of SCIP, and to evaluate its effectiveness.

B. Provide technical assistance in the development and conduct of training, quality control, process evaluation, data management, analysis, and evaluation to ensure sharing of experience between SCIP project States and sharing of their lessons learned with non-project States. This collaboration will include site visits when deemed necessary by the State or CDC.

C. Perform laboratory analyses on SCIP urine specimens on behalf of the State and report the results back to them.

D. Collaborate in the preparation and dissemination of information concerning the SCIP project, activities, and results through appropriate presentations and publications.

Recipient activities are:

A. Field Testing

As appropriate, complete the evaluation of the field test. Specify modifications that are needed in the intervention and data management instruments and protocols.

B. Training

As appropriate, conduct refresher training based on field test modifications for prenatal care (PNC) clinics and WIC staff that participated in the field test.

C. Quality Control and Process Evaluation

1. Establish performance standards for acceptable adherence to the intervention and data management protocols.

2. Establish systematic procedures for monitoring adherence to the intervention and data management protocols, and integrate the monitoring procedures into normal supervision of staff activities to the extent possible.

3. Use monitoring information to assess adherence to protocols during and after the study period.

4. Assure that problems are identified and solved at the local and State levels as necessary.

5. Monitor potential sources of influence on participants' smoking behavior that may stem from PNC or WIC staff, the patients themselves, media, or members of the community.

D. Data Management

1. Use the State patient/forms tracking system to generate reports that are provided to PNC clinics on a routine basis.

2. Ensure that all forms/urine specimens that are supposed to be received have been received and followed up where discrepancies are identified.

3. Document the condition of urine specimens upon receipt at the State Laboratory.

E. Analysis and Reporting

1. Develop State analysis plan.

2. Conduct State analyses.

3. Review results with State health department program managers and policy makers.

4. Complete analyses.

5. Prepare SCIP evaluation (final) report.

6. Prepare and disseminate information concerning the SCIP Project, activities, and results through appropriate presentations and publications.

Eligible Applicants

As stated above, the States of Colorado, Maryland, and Missouri are the only three States that have the critical factors in place which permit the SCIP Demonstration and Research Project to be successfully completed within the project period. The States have conducted focus groups' sessions within populations targeted for intervention to assess what should be most helpful in quitting and maintaining cessation. They have already estimated smoking prevalence by local health jurisdiction; have calculated sample size requirements; and have obtained formal agreement from local health departments to participate in the study as either an intervention or control site to be determined by randomization. The States have already developed forms and questionnaires to be filled out by PNC patients at enrollment, at the eighth month of pregnancy, and at six weeks postpartum. These forms were developed by the States without review or approval by CDC. However, technical assistance was provided. In addition, they have already developed a computerized database which can provide timely feedback to local health departments regarding the status of the study.

Review and Evaluation Criteria

The review and evaluation of the renewal applications will be based on their merits when considering the following criteria:

1. Overall Understanding.
2. State Commitment.
3. Measurable Objectives.
4. Adequacy of Plan and Timetable.
5. Acceptable Project Management Structure.
6. Effective Problem-Solving Capability.

Availability of Funds

Approximately $350,000 will be available in Fiscal Year 1988 to fund three Cooperative Agreements, ranging from $100,000 to $150,000, for the first twelve months of a two-year project period. It is expected that the Cooperative Agreements will be awarded on September 1, 1988. Continuation awards for the second year will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funds may not be used to pay for recurrent costs associated with direct service delivery (i.e., patient counseling and intervention).

Application Submission and Deadline

1. *Copies:* The original and 2 copies of the application (form PHS 5161–1 Rev. 3/86) must be submitted to Ms. Nancy C. Bridger, Chief, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305 on or before August 9, 1988.

2. *Deadlines:* Applications shall be considered as meeting the deadline if they are either:

2.1 Received on or before the deadline date, or

2.2 Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service since private metered postmarks will not be acceptable as proof of timely mailing.)

Applications which do not meet the deadline as described in 2.1 or 2.2 above are considered late applications and will not be considered for review or funding.

Reviews

Applications are not subject to review by State and local officials as governed by Executive Order 12372 (Intergovernmental Review of Federal Programs).

Information For Completion of Applications

Information on application procedures, copies of application forms, and other material may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305; telephone (404) 842–6575 or FTS 236–6575.

Technical assistance may be obtained from Dr. Michael E. Dalmat, Assistant Branch Chief, Pregnancy Epidemiology Branch, Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE., Building 1, Room 4065, Mailstop C–06, Atlanta, Georgia 30333; telephone (404) 639–1319 or FTS 236–1319.

Dated: August 1, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–17657 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88B–0233]

Suggested State Regulations for Control of Radiation; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an Interim Revision to Volume I (Ionizing Radiation) of a publication entitled "Suggested State Regulations for Control of Radiation" (SSRCR) (HHS Publication FDA 83–8203). Included with this Interim Revision is a transmittal sheet with instructions for incorporating these new and revised pages into Volume I of the SSRCR. Copies have been distributed to the State and local radiation control agencies by the Conference of Radiation Control Program Directors, Inc.

ADDRESSES: The Interim Revision to Volume I of the SSRCR has been placed on display in, and written comments may be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the Interim Revision are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (PB 88–140801/AS) at a cost of $14.95 per copy. Requests for a single copy from a limited supply of the SSRCR Interim Revision may be made to the Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Copies of the basic document of Volume I of the SSRCR may be obtained from NTIS (PB 83–252569) at a cost of $38.95.

FOR FURTHER INFORMATION CONTACT: Charles P. Froom, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: The SSRCR was initially published in 1962 by the Council of State Governments with the advice and assistance of the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) and the U.S. Public Health Service. Since 1970, development and revision of the SSRCR has been accomplished by working groups of the Conference of Radiation Control Program Directors, Inc., representing the State and local agencies, with the support and assistance of NRC; the

Center for Devices and Radiological Health, Food and Drug Administration; and the Environmental Protection Agency.

The suggested State regulations were updated and revised in 1964, 1966, 1970, 1974, 1978, and 1982. These revised suggested regulations being made available are designated as "interim" revisions because the complete document is not being revised, but rather new and revised pages are being inserted into the last complete revision. The Atomic Energy Act of 1954, as amended in section 274 (42 U.S.C. 2021), authorizes NRC to cooperate with the States in formulating standards for protection against hazards of radiation. FDA, under the broad responsibility conferred by the Public Health Service Act (42 U.S.C. 241 and 243), advises and promotes cooperation between the States on matters relating to protecting the public against specified radiation hazards. The Radiation Control for Health and Safety Act of 1968 further provides for the establishment by FDA of an electronic product radiation control program designed to protect the public health and safety (42 U.S.C. 263d and 263e). In implementing this program, the agency is authorized to make such recommendations relating to such hazards and control as it considers appropriate. Acting on these authorizations and responsibilities, NRC and FDA's Center for Devices and Radiological Health cooperated with the Conference of Radiation Control Program Directors and the Environmental Protection Agency in the preparation of these model State regulations.

This Interim Revision and previous revisions of the SSRCR have been prepared to be consistent with Federal radiation control regulations issued by Federal agencies to carry out responsibilities vested in them by law. Changes in Federal regulations, radiation guidance, or recommended standards and the experience and suggestions of the State radiation control agencies and others provide a basis for revision of the SSRCR. The Interim Revision reflects amendments to NRC regulations (10 CFR Chapter I) and the electronic product radiation safety performance standards issued by FDA (21 CFR Chapter I, Subchapter J).

I. Purpose of Suggested State Regulations for Control of Radiation

The suggested State regulations are basically designed as guidance for development and amendment of State radiation control regulations to encourage uniform regulations among the States, to complement Federal regulations, and to help States maintain regulations compatible with, identical to, or as effective as Federal regulations. Because of requirements placed on State regulatory agencies in promulgating regulations consistent with the standards of a number of Federal agencies, it is especially important that Federal and State agencies cooperate in their development. These model regulations can serve as a means of assisting the States in developing regulations that are consistent with Federal radiation control standards to the extent required. For example:

1. The Atomic Energy Act of 1954, as amended by Pub. L. 86–373 (73 Stat. 688), specifies in section 274 (42 U.S.C. 2021), as a condition for a State to enter into an agreement with NRC to assume regulatory responsibility for byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass, that the State program be compatible with NRC's program for regulation of such material, and that the State program be adequate to protect the public health and safety with respect to the materials covered by the agreement.

2. The Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, specifies in section 360F (42 U.S.C. 263n) that no State or political subdivision of a State may either establish or continue in effect any standard that applies to the same aspect of performance of an electronic product for which a Federal standard is in effect and which is not identical to the Federal standard.

3. Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) provides that, for a State plan to be approved, the State regulations must be at least as effective as the Federal standards issued under section 6 of that act which relate to the same issues.

These statutory requirements emphasize the importance of cooperation among Federal agencies and State representatives to ensure consistency in radiation control regulations.

The main purpose of this Interim Revision to Volume I (Ionizing Radiation) of the SSRCR is to provide companion regulations consistent and in conformity with certain amendments to Federal standards in 10 CFR Parts 20, 35, and 61, and in 21 CFR Part 1020. Other changes were made to reflect data obtained from special studies and constructive comments received on some provisions of the SSRCR.

II. Scope and Content

This Interim Revision to Volume I of the SSRCR includes a new Part M—Licensing Requirements for Land Disposal of Radioactive Waste. Also included in this SSRCR Interim Revision are amendments to Part C—Licensing of Radioactive Material, Part D—Standards for Protection Against Radiation, Part F—X-rays in the Healing Arts, and Part G—Use of Sealed Radioactive Sources in the Healing Arts. The table of contents has also been revised to reflect the location of new or revised pages.

A rationale is included for each of the revised and new part(s) of the SSRCR Interim Revision, with documentation for the amendments or new provisions. The amendments to Federal standards, which serve as a basis for changes and additions to the SSRCR, are referenced in the rationale to provide needed background information. Certain proposed changes were not included in the document but were recorded in the rationale for future consideration by the Conference of Radiation Control Program Directors, Inc., and appropriate Federal agencies.

Earlier revisions of the SSRCR have added new parts including: Part H—Radiation Safety Requirements for Analytical X-Ray Equipment, Part I—Radiation Safety Requirements for Particle Accelerators, Part J—Notices, Instructions and Reports to Workers; Inspections, and Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies. Part J incorporates provisions of 10 CFR Part 19 of NRC regulations. These provisions are comparable to those of the Department of Labor for inspections pursuant to the Occupational Safety and Health Act of 1970, under 29 CFR Part 1903. With the addition of the Interim Revision, Volume I (Ionizing Radiation) of the SSRCR now consists of the following parts:

Part A—General Provisions
Part B—Registration of Radiation Machine Facilities and Services
Part C—Licensing of Radioactive Material
Part D—Standards for Protection Against Radiation
Part E—Radiation Safety Requirements for Industrial Radiographic Operations
Part F—X-rays in the Healing Arts
Part G—Use of Sealed Radioactive Sources in the Healing Arts
Part H—Radiation Safety Requirements for Analytical X-ray Equipment
Part I—Radiation Safety Requirements for Particle Accelerators
Part J—Notices, Instructions and Reports to Workers; Inspections
Part M—Licensing Requirements for Land Disposal of Radioactive Waste
Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

III. Use of Suggested State Regulations

The SSRCR provide a comprehensive set of ionizing radiation control regulations covering a number of subjects, including performance requirements applicable to equipment, safe use of radiation sources, and requirements on the facility wherein the sources are used. Thus, they provide a comprehensive code of radiation control provisions to ensure, at the State level, protection of the public health from radiation. In addition, these model regulations could be used as a resource document by Federal agencies using radiation sources in instituting a total radiation safety program for Federal facilities. For those States that have or that are entering into an agreement with NRC, the model regulations include provisions for the control of byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass; however, these materials, when used within Federal agencies, are under the direct control of NRC. This model could serve as a basis for meeting the requirements of section 19 of the Occupational Safety and Health Act of 1970 and Executive Order 12196 (Occupational Safety and Health Programs for Federal Employees), as they relate to radiation control, enabling each Federal department and agency to establish an occupational safety and health program.

In essence, these suggested radiation control regulations could be used as: (1) An aid in revising current State codes, (2) an aid in developing comprehensive codes at the State level when no regulations are in force, (3) an aid in developing radiation safety programs for Federal installations, or (4) an aid to manufacturers who need to know what type of controls may exist at the State level. It is recommended that applicable Federal or State agency regulations also be consulted directly.

IV. Review and Comments

Interested persons are invited to submit written comments and recommendations at any time regarding this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments should be identified with the docket number appearing in the heading of this notice. Each recommendation should be supported by appropriate rationale and background data that clearly establishes the scientific, technical, and public health bases for the recommendation. Such comments will be provided to the appropriate working groups and kept on file for consideration by those individuals given responsibility for the review and development of their part of the SSRCR.

Dated: July 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–17641 Filed 8–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–920–4113–16]

California; Proposed Statewide Notice to Lessees and Operators of Federal Geothermal Resources Leases for Diligent Exploration Activities

Notice is hereby given that a Notice to Lessees (NTL) and operators of Federal Geothermal Resources Leases for DILIGENT EXPLORATION EXPENDITURES (DEE) is available in draft for public comment. The NTL clarifies the BLM's policy for receiving and approving expenditure reports, as allowed under the regulations at 43 Code of Federal Regulations (CFR) 3203 and 3264, by updating and superseding NTL–79–01, which was approved by the United States Geological Survey in 1979. This revised NTL provides significant new information in response to important questions by lessees and operators. The NTL identifies the items that will qualify as DEE, explains when DEE reports are due, and lists the information that is required in order to obtain BLM approval. Comments are being accepted through August 26, 1988. A copy of the draft NTL is available from the California State Office of the Bureau of Land Management, Public Room, 2800 Cottage Way, Sacramento, California 95825, or by calling the Public Room at (916) 978–4754.

Date: July 29, 1988.

Douglas M. Koza,

Chief, Branch of Fluids, Division of Minerals Resources.

[FR Doc. 88–17634 Filed 8–4–88; 8:45 am]

BILLING CODE 4310–40–M

[NM–040–08–4212–08; KS NM–63449]

Intent To Prepare Supplement to Planning Analysis

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent To Prepare a Supplement to the Land Use Planning Analysis for Public Lands in Kansas and Invitation for Public Participation in the Formulation of Alternatives.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Resource Area of the Tulsa District is preparing a supplement to the 1987 *Planning For Proposed Disposal of Public Lands in Kansas.* The need for preparation of a supplement to this Planning Analysis Decision Document. The Planning Analysis presented and analyzed three alternatives for management of the 1023.49 area of Federal public lands situated on 21 isolated tracts within 15 counties throughout Kansas. The three alternatives analyzed included: (1) Transfer 626.07 acres to private ownership and 397.42 acres to the Kansas Department of Wildlife and Parks; (2) No Action, retain 1023.49 acres in public ownership; (3) Transfer 1023.49 acres into private ownership.

The Supplemental Planning Analysis (SPA) will analyze additional lands and minerals management alternatives developed from public comments or derived as a result of protests received on the 1987 Decision Document.

The Kansas Department of Wildlife and Parks (KDWP) as well as the Kansas Chapter of the Wildlife Society filed protests with the Director of the BLM regarding the lands identified for transfer to KDWP within the proposed Decision Document. The protests were based upon the proposal to transfer tracts with wildlife values to private ownership rather than transferring all these tracts to KDWP for the public's benefits. In order to resolve this protest, one additional alternative to be analyzed by the SPA will be: Transfer 1023.49 acres to the KDWP under provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926. The SPA will address the management of additional tracts of public lands in Kansas in excess of the currently known 1023.49 acres that may be identified in the future. The Development of criteria for the disposition of such tracts and the inclusion of this additional analysis will allow for consistency in the application of any land use decisions resulting from this planning effort. Additionally the SPA will address and analyze the potential leasing and development of Federal Minerals (principally oil and gas) within Kansas. Only those Federally owned minerals which have not been addressed by land use planning conducted by other Federal surface management agencies will be included in this analysis.

DATE: Comments related to this SPA and suggested alternatives will be accepted through September 16, 1988.

ADDRESS: Comments and suggestions should be sent to: Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, Oklahoma 73102.

FOR FURTHER INFORMATION CONTACT: Brian Mills, Oklahoma Resource Area, (405) 231–5491.

SUPPLEMENTARY INFORMATION: The 1023.49 acres of BLM administered public lands within the State of Kansas vary in size from 0.38 of an acre to 400 acres. The isolated nature of these small tracts as well as legal access issues limit the agencies normal land and resource management programs and result in an absentee landlord situation.

Dated: July 29, 1988.

Larry Woodard,

Acting State Director.

[FR Doc. 88–17658 Filed 8–4–88; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

August 2, 1988.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the name corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. (1) Parent corporation and address of principal office: Dixie Yarns, Inc., 1100 South Watkins Street, P.O. Box 751, Chattanooga, Tennessee 37401.

(2) Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Subsidiary and State of Incorporation
Ti-Caro, Inc., P.O. Box 699, 1002 Jenkins Road, Gastonia, NC 28052—North Carolina

China Grove Cotton Mills, P.O. Box 507, 308 E. Thom Street, China Grove, NC 28023—North Carolina
North State Knitting Mills, P.O. Box 957, 1140 N. Flint Street, Lincolnton, NC 28093—North Carolina
Southern Mercerizing Company, Highway 176, South, Tryon, NC 28782—North Carolina
Threads of Puerto Rico, Inc., P.O. Box 325, Arroyo, Puerto Rico 00615—North Carolina

B. 1. Parent corporation and address of principal office: Graniteville Company, One Marshall Street, Graniteville, South Carolina 29829.

2. Wholly-owned subsidiaries which will participate in the Operations, and State(s) of incorporation: C.H. Patrick & Company, Inc., incorporated in South Carolina.

C. 1. Parent corporation and address of principal office: Masco Industries, Inc., 21001 Van Born Road, Taylor, Michigan 48180.

2. Wholly-owned subsidiaries* which will participate in the operations, and their States of incorporation:

Acme Steel Door Corp. (NY)
Acme Steel Partition Co., Inc. (NY)
  Architectural Building Components, Inc. (MA)
  Flush-Metal Partition Corp. (NY)
Acme Steel Shelving Corp. (NY)
Acme Office Group, Inc., (NY)
ALUP America, Inc., (DE)
Architectural Specialties Co., Inc. (FL)
Arrow Oil Tools, Inc. (DE)
  Armoun, Inc. (DE)
Arrow Speciality Company (DE)
Atlas Door Corp. (DE)
  Atlas Door Co., Inc. (NV)
BLD Products, Ltd. (MI)
Ball Valve Co., Inc. (KS)
Braun Engineering Co. (MI)
  Precision Production Corp. (MI)
C&C, Incorporated (MI)
  Cars & Concepts, Inc. (MI)
  Cars & Concepts Competition, Inc. (MI)
  Cars & Concepts International, Ltd. (MI)
  C&C Performance, Inc. (MI)
  G.M. Spoilers, Inc. (NY)
  Spoilers Plus, Inc. (NY)
Cold Forge, Inc. (DE)
Crossing Metal Spinning & Stamping Co., Inc. (NY)
Drilex Systems, Inc. (TX)
Eagle Window & Door, Inc. (IA)
Eskay Screw Corporation (DE)
Exotic Metals, Incorporated (DE)
Flo-Con Systems, Inc. (IL)
  Flo-Con Holding, Inc. (DE)
  Slide Gate Services, Inc. (IL)
Foster Oilfield Equipment Co. (DE)
Garrett Manufacturing Company (DE)
Hi-Ram, Inc. (DE)
Hi-Vol Products, Inc. (MI)
Holman Boiler Works, Inc. (DE)
K-Tech, Inc. (IL)
Kendallville Foundry, Inc. (DE)
Lamons Metal Gasket Co. (DE)
Richard Lee Industries, Inc. (PA)
Lindsey Completion Systems, Inc. (DE)
Longman Enterprises, Inc. (FL)
  Pylon Manufacturing Corp. (DE)
W.C. McCurdy Co. (MI)
Tom McGuane Industries, Inc. (MI)
Masco Industries, Services, Inc. (DE)
Nimas Corporation (DE)
  NI Industries, Inc. (DE)
Opdyke Stamping, Inc. (MI)
R&B Manufacturing Company (MI)
Richards Micro-Tool, Inc. (DE)
Rieke Corporation (IN)
  Rieke of Mexico, Inc. (DE)
  Rieke Leasing Co., Incorporated (DE)
Rohrback Corporation (WA)
Rupert Manufacturing Company (DE)
Schmelzer Corporation (MI)
  Tawas Industires, Inc. (MI)
Taylor Building Products Company (MI)
Tools & Technology Investments, Inc. (DE)
Van Wormer Industries, Inc. (MI)
Walker-McDonald Mfg. Co. (DE)

*Directly owned subsidiaries appear at the left hand margin, first tier and second tier subsidiaries are indicated by single and double indentation, respectively, and are listed under the names of their respective parent companies.

D. 1. Parent corporation, address of principal office and State of Incorporation: Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602—Maryland

2. Wholly owned subsidiaries which will participate in the operations, the address of their respective principal offices and their States of Incorporation:

Aris Isotoner, Inc., 417 Fifth Avenue, New York, New York 10016—Delaware
Bali Company, 3330 Healy Dr., Winston-Salem, North Carolina 27103—Delaware
Bil Mar Foods, Inc., 8300 96th Avenue, Zeeland, Michigan 49464—Delaware
Booth Fisheries Corporation, 1300 W. Higgins, Park Ridge, Illinois 60068—Delaware
Bryan Foods, Inc., 1 Churchill Road, P.O. Box 1177, West Point, Mississippi 39773—Mississippi
Capitol Foods Company, 6501 Fulton Industrial Blvd., Atlantia, Georgia 30336—Georgia
Circle T Foods Company, Inc., 4560 Leston, Dallas, Texas 75247—Texas
Coach Stores, Inc., 516 West 34th Street, New York, New York 10001—Delaware
Coach Leatherware Company, Inc., 300 Chubb Avenue, Lyndhurst, New Jersey 07071—New Jersey
Country Commons Inc., 500 Waukegan Road, Deerfield, Illinois 60015—Delaware
Douwe Egberts Coffee Service, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Delaware
Epic Company, Inc., Jimmy Dean Avenue, Osceola, Iowa 50213—Illinois
Frigid Freeze Foods, Inc., 1025 Electric Road, Salem, Virginia 24153—Virginia

The Fuller Brush Company, 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—Connecticut
Fuller Brush Catalog, Inc., 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—North Carolina
Gibbon Packing, Inc., P.O. Box 2006, Milwaukee, Wisconsin 53201—Connecticut
Green Hill Incorporated, Rt. 11, Elliston, Virginia 24087—Virginia
Hanes Menswear, Inc., 3334 Healy Drive, Winston-Salem, North Carolina—Delaware
Higdon Food Service, Inc., 1350 N. 10th St., Paducah, Kentucky 44002—Kentucky
Hollywood Brands, Inc., 100 S. Poplar, Centralia, Illinois 62801—Delaware
Illinois Fruit & Produce Corp., One Quality Lane, Streator, Illinois 61364—Illinois
The Jimmy Dean Meat Company, Inc., 1341 W. Mockingbird Lane, Dallas, Texas 75247—Texas
Kiwi Brands Inc., Route 662 North, Douglassville, Pennsylvania 19518—Delaware
Landlock Seafood Company, Inc., 4119 Billy Mitchell Road, Addison, Texas 75001—Texas
L'eggs Brands, Inc., P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105—North Carolina
Lyon's Restaurants, Inc., 1165 Triton Drive, Foster City, California 94404—Delaware
Lyon's Restaurants in Oregon, Inc., 1165 Triton Drive, Foster City, California 94404—Oregon
Ozark Salad Company, Inc., 100 N. Youngman, Baxter Springs, Kansas 66713—Delaware
Peck Foods Corporation, P.O. Box 2006, Milwaukee, Wisconsin 53201—Wisconsin
Priddy's Quality Foods, Inc., 204 H N.E., Ardmore, Oklahoma 73401—Oklahoma
PYA/Monarch, Inc., 107 Frederick Street, P.O. Box 1328, Greenville, South Carolina 29602—Delaware
Rice Hosiery Corporation, 550 Fairfield Road, High Point, North Carolina—North Carolina
Sara Lee Knit Products, Inc., 3334 Healy Drive, Winston-Salem, North Carolina 27103—Delaware
Schloss & Kahn, Inc., US Highway 80 & Newcomb Avenue, Montgomery, Alabama 36195—Delaware
Seitz Foods, Inc., Box 247, St. Joseph, Missouri 64502—Delaware
Sky Bros., Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603—Pennsylvania
Sky Bros. of Lemoyne, Inc., 1135 North Plymouth St., Allentown, Pennsylvania 16103—Pennsylvania
Standard Meat Company, 3709 East First Street, Forth Worth, Texas 76111—Texas
Stedman Corporation, P.O. Box 1288, Asheboro, North Carolina 27203—North Carolina
Superior Coffee and Foods, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Illinois
Twin Rivers Transportation Company, 955 Hamilton Drive, University Park, Illinois 60466—Illinois
Wolferman's Inc., One Muffin Lane, North Kansas City, Missouri 64116—Delaware

Noreta R. McGee,

Secretary.

[FR Doc. 88-17653 Filed 8-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30800; Sub-No. 25]

Union Pacific Corp. and Union Pacific Railroad Co.; Petition for Exemption To Issue Securities and Guarantee Obligations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Union Pacific Corporation (UP) and Union Pacific Railroad Company (UPRR) from the requirements of 49 U.S.C. 11301 with respect to the issuance by UP of securities in a principal amount not to exceed $160 million, and with respect to the guarantee by either UP or UPRR of an obligation assumed by Missouri Pacific Railroad Company. These transactions are intended to facilitate the acquisition of control by UP and its railroad subsidiaries of Missouri-Kansas-Texas Railroad Company.

DATES: This exemption will be effective August 8, 1988. Petitions to reopen must be filed by August 25, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 30800 (Sub-No. 25) to: 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 applicants' representatives: William J. McDonald, Carl von Bernuth, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245, [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357/4359 (D.C. Metropolitan Area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-17603 Filed 8-4-88; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at 1211 Avenue of the Americas, 38th Floor, Conference Room A, New York City, New York on September 8, 1988, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S. Code, section 552b (c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Date: July 29, 1988.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 88-17649 Filed 8-4-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the

Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 14, 1988, Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 6, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 28, 1988.

Gene R. Haislip,

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

[FR Doc. 88–17709 Filed 8–4–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations are prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

South Carolina:
SC88–5 (Jan. 8, 1988)—p. 1034

Volume II

Michigan:
MI88–1 (Jan. 8, 1988)—pp. 413–514, pp. 417, 423
MI88–2 (Jan. 8, 1988)—pp. 426–439, pp. 417, 423
MI88–3 (Jan. 8, 1988)—pp. 444–452
MI88–4 (Jan. 8, 1988)—pp. 454–459
MI88–5 (Jan. 8, 1988)—pp. 463–468
MI88–6 (Jan. 8, 1988)—p. 476
MI88–7 (Jan. 8, 1988)—pp. 479–498
MI88–12 (Jan. 8, 1988)—pp. 508–513
MI88–17 (Jan. 8, 1988)—pp. 524–525

Volume III

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 1st day of August 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–17594 Filed 8–4–88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunications Standards; Availability of Impact Assessment Report

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice of availablity of impact assessment report.

SUMMARY: The purpose of this notice is to announce the availability of a report, prepared by the Commerce Department's Institute for Telecomunication Sciences, assessing the technological and economic impact of proposed Federal Standard 1023. Proposed Federal Standard 1023 is entitled "Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice Utilized with 25 KHz Channel FM Radios Operating Above 30 MHz". Considered in the preparation of this report were comments received as a result of a solicitation of the views of Federal agencies, industry, the public, and state and local governments that appeared in the Federal Register of January 26, 1988 (53 FR 211).

ADDRESS: Send request for copies of the report entitled "Impact Assessment of Proposed Federal Standard 1023" to Office of Technology and Standards, National Communications System, Washinlgton, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692–2124.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 88–17653 Filed 8–4–88; 8:45 am]

BILLING CODE 2610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company[1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Indentification of Proposed Action: In general, the proposed license amendment would revise Surveillance Requirement 4.11.2.7.2. concerning the radioactivity rate of noble gases from the off-gas recombiner effluent in order to ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2. The licensees proposed an exception to Specifications 4.0.4 in Surveillance Requirement 4.11.2.7.2. which would allow the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillances.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action: Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 which would ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2.

Specification 4.0.4 states that entry into an OPERATIONAL CONDITION or other specified applicable condition shall not be made unless the Surveillance Requirement(s) associated with the Limiting Condition for Operation have been performed within the applicable surveillance interval or as otherwise specified. Specification 4.11.2.7.2 requires the radioactivity rate of noble gases from the off-gas recombiner effluent to be determined at two specified frequencies: (1) At least once per 31 days, and (2) within 4 hours following an increase of 50% in the indicated nominal steady state fission gas release from the primary coolant (with certain provisions). The APPLICABILITY of this Specification (i.e., the applicable OPERATIONAL CONDITION) is "during operation for the main condenser air ejector".

Although it is readily apparent that Surveillance 4.11.2.7.2 cannot be performed until after entering the special applicable OPERATIONAL CONDITION, an exception to Specification 4.0.4 has been proposed to be included in Specification 4.11.2.7.2. in order to ensure compatibility between Specification 4.0.4 and 4.11.2.7.2. This exception formally allows the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillances.

Environmental Impacts of the Proposed Action: The Commission has determined that the licensees' proposed change to their RETS meets the intent of the NRC model RETS for BWRs, NUREG–0473, Revision 2, dated February 1, 1980. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Two plants which are similar to Clinton that were licensed in the past several years have this proposed exception incorporated in their original RETS.

The Commission has determined that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impacts. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable".

Alternative to the Proposed Actions: The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

Agencies and Persons Consulted: The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact:

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 1st day of August 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88–17698 Filed 8–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–182]

Environmental Assessment and Notice of Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility Operating License No. R–87, Purdue University

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R–87 for the Purdue University research reactor located on the campus of Purdue University (the licensee) in West Lafayette, Indiana.

Environmental Assessment

Description of Proposed Action

This Environmental Assessment is written in connection with the proposed renewal for 20 years of the operating license of the Purdue University research reactor (PUR) at West Lafayette, Indiana, in response to a timely application from the licensee dated June 30, 1986, as supplemented. The proposed action would authorize continued operation of the reactor in the manner that it has been operated since License No. R–87 was issued in 1962. Currently there are no plans to change any of the structures or operating characteristics associated with the reactor during the renewal period requested by the licensee.

Need for the Proposed Action

The operating license for the facility was due to expire in August 1986. The proposed action is required to authorize continued operation so that the facility can continue to be used in the licensee's mission of education and research.

Alternatives to the Proposed Action

The only renewable alternative to the proposed action that was considered was not renewing the operating license. This alternative would have led to cessation of operations, with a resulting change in status and a likely small impact on the environment.

Environmental Impact

The PUR operates in an existing shielded pool of water inside an existing multiple-purpose building, so this licensing action would lead to no change in the physical environment.

Based on the review of the specific facility operating characteristics that are considered for potential impact on the environment, as set forth in the staff's Safety Evaluation Report (SER) [1] for this action, it is concluded that renewal of this operating license will have an insignificant environmental impact. Although judged insignificant, operating features with the greatest potential environmental impact are summarized below.

Argon–41, a product from nuetron irradiation of air during operation, is the principal airborne radioactive effluent from the PUR during routine operations. Conservative calculations by the staff, based on the total amount of Ar–41 released from the reactor during a year, predict a maximum potential annual whole body dose of less than 1 millirem in unrestricted areas. Radiation exposure rates measured outside of the reactor facility building are consistent with this computation.

The staff has considered hypothetical credible accidents at the PUR and has concluded that there is reasonable assurance that such accidents will not release a significant quantity of fission products from the fuel cladding and, therefore, will not cause significant radiological hazard to the environment or the public.

This conclusion is based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(b) At a thermal power level of 1000 watts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(c) The hypothetical loss of integrity of the maximum irradiated fueled experiment will not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

In addition to the analyses in the SER summarized above, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental impact associated with the operation of research reactors licensed to operate at power levels up to and including 2 MW(t) and that an Environmental Impact Statement is not required for the

[1] NUREG–1283, "Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at Purdue University."

issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the PUR and that there are no special or unique features that would preclude reliance on the generic evaluation.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff has obtained the technical assistance of the Idaho National Engineering Laboratory in performing the safety evaluation of continued operation of the PUR facility.

Conclusion and Basis for Finding of No Significant Environmental Impact

Based on the foregoing Environmental Assessment, the Commission has concluded that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated June 30, 1986, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of July 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-17699 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

Intention To Establish a Local Public Document Room Serving Northern Nevada for Records Pertaining to the Potential High-Level Radioactive Waste Geologic Repository Site in Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to establish a local public document room in northern Nevada, serving principally the Carson City-Reno area, for records pertaining to the potential high-level radioactive waste geologic repository site, Yucca Mountain, Nevada.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) intends to establish a local public document room (LPDR) in the Carson City/Reno area for records pertaining to the potential high-level radioactive waste geologic repository site, located near Yucca Mountain, Nevada. The collection currently measures approximately 75 linear feet of material, and is expected to increase by 25–30 linear feet each year.

DATE: Comment period expires September 6, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Ms. Juanita Beeson, Chief, Rules Review and Editorial Section, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, Local Public Document Room Program Director, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7536, or Toll Free 800–638–8081.

Among the factors the NRC will consider in selecting a location for the collection are the following:

(1) Whether the library is an established document repository with a history of impartially serving the public;

(2) The willingness and ability of the library to house and maintain the collection;

(3) The physical facilities available, including shelf space, work space, and copying and micrographics equipment;

(4) The willingness and ability of the library staff to assist the public locate records; and

(5) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours.

Public comments are requested on libraries in the Carson City/Reno area that might be considered for selection as the NRC local public document room for records pertaining to the potential high-level radioactive waste geologic repository site being considered in Nevada.

Dated at Bethesda, Maryland, this 1st day of August 1988.

For the U.S. Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-17700 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA; ASLBP No. 87-554-04-OLA]

General Public Utilities Nuclear Corp.; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *General Public Utilities Nuclear Corporation, et al.* (Three Mile Island Nuclear Station, Unit 2), Docket No. 50–320–OLA, is hereby reconstituted by appointing Administrative Judge Peter B. Bloch in place of Administrative Judge Sheldon J. Wolfe, who is unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman
Glenn O. Bright
Oscar H. Paris

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 29th day of July 1988.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-1770 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp. et al.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 144 to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation, et al. (the licensee), which revised the Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1,

located in Dauphin County, Pennsylvania.

The amendment adds to the Technical Specifications action statements and surveillance requirements for certain instrumentation used to monitor plant parameters following an accident as required by Regulatory Guide 1.97.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 2, 1987 (52 FR 45882). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated September 15, 1987, (2) Amendment No. 144 to License No. DPR-50, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 29th day of July 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate I-4, Division of Rector Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-17702 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 113 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS Section 4.4.5.2 relating to steam generator sample selection and inspection. Specifically, the amendment added a third special interest group comprised of tubes near the centers of both steam generators.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 25, 1988 (53 FR 9835). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect of this action see: (1) The application for amendment dated January 11, 1988 as supplemented April 14, 1988, (2) Amendment No. 113 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated July 22, 1988 and (4) the Environmental Assessment dated July 14, 1988 (53 FR 27579). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 22nd day of July 1988.

For the Nuclear Regulatory Commission.

Albert W. DeAgazio,

Project Manager, Project Directorate—III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-17703 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224-OLA; ASLBP No. 87-574-07-OLA

University of California, Berkeley; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *University of California, Berkeley* (Research Reactor), Docket No. 50-224-OLA, is hereby reconstituted by appointing Administrative Judge Helen F. Hoyt in place of Administrative Judge Sheldon J. Wolfe, who is unable to continue to serve.

As reconstituted, the Board is comprised of the following Adminmistrative Judges:

Helen F. Hoyt, Chair
Glenn O. Bright
James A. Carpenter

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Helen F. Hoyt, Chair Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 29th day of July 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-17704 Filed 8-4-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25956; File No. 600-24]

Self-Regulatory Organizations; Delta Government Options Corp.; Application for Registration as a Clearing Agency

On July 29, 1988, Delta Government Options Corp. ("Delta") filed with the Commission an application for full registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1 ("Act"). Delta would issue and trade options on U.S. government securities and provide clearance and settlement services with

respect to those options.[1] As described below, Delta has requested several exemptions from the requirements of Section 17A.

Section 17A(b)(1) of the Act permits the Commission to grant exemptions from the requirements of section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A. Delta first requests a partial exemption from section 17A(b)(3)(A) of the Act in that Delta wants the words "rules of the clearing agency" contained in that provision to refer only to agreements between Delta and its participants and Delta procedures which affect the safeguarding of securities and funds. In this regard, Delta seeks confirmation that its internal corporate relationships, as embodied in its Certificate of Incorporation, By-Laws, shareholders' agreements and related instruments would not be considered "rules" under section 3(a)(27) of the Act for purposes of Section 17A of the Act. Delta also requests exemptions from the participant admission requirements of section 17A(b)(3)(B) of the Act and the fair representation requirements of section 17A(b)(3)(C) of the Act. In addition, Delta requests an exemption from section 17A(b)(3)(F) of the Act, except to the extent that Delta would promote the prompt and accurate clearance and settlement of securities transactions and would provide for the safeguarding of securities and funds. Furthermore, Delta requests an exemption from section 17A(b)(3)(G) of the Act to the extent that it would prohibit Delta from exercising its discretion in responding to particular participant defaults and the circumstances under which they may arise. Delta also requests exemptions from the due process requirements of sections 17A(b)(3)(H) and 17A(b)(5) of the Act, and confirmation that these exemption requests, if granted, would render sections 19(d), 19(c), and 19(f) of the Act inapplicable to Delta. Finally, Delta requests an exemption from the Division of Market Regulation ("Division") standard [2] that requires a clearing agency to perform annually an audit of its system of internal accounting controls.

[1] Brokerage services would be provided to Delta by RMJ Options Trading Corp. Security Pacific National Trust Company (New York) would clear and settle the purchase, sale, and exercise of all options issued and traded by Delta.

[2] The Commission has published standards that the Division of Market Regulation uses in evaluating clearing agency registration applications. *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

You are invited to submit written data, views, and arguments concerning the foregoing application within twenty-one days of the date of publication of this notice in the **Federal Register.** Such written data, views, and arguments will be considered by the Commission in deciding whether to approve Delta's full registration application and grant Delta's exemption requests. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–24. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–17730 Filed 8–4–88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–25957; File No. 600–19]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Extending Registration as a Clearing Agency

On February 2, 1987, the Securities and Exchange Commission granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2]

The order granting MBSCC's application contemplated that on or before August 2, 1988, the Commission would consider whether to grant MBSCC registration as a clearing agency without exemptions from statutory standards or consider whether to grant MBSCC such exemption from statutory standards, as MBSCC may request, as appropriate under the Act. By letter dated July 28, 1988, MBSCC has consented to an extension of the time for action on its application for registration.

It is ordered, that MBSCC's registration as a clearing agency be, and hereby is, extended until August 2, 1989.

By the Commission.

Dated: August 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–17731 Filed 8–4–88; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

[2] Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[Rel. No. 34–25955; File No. SR–CSE–88–03]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change

On June 7, 1988, the Cincinnati Stock Exchange ("CSE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securties Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to reduce on a six months pilot basis the order exposure period from thirty to fifteen seconds.

The proposed rule change will reduce the processing period for public and professional agency orders by lowering the second exposure period from thirty to fifteen seconds. This reduction will be similar to a reduction recently approved on a pilot basis for the Midwest Stock Exchange ("MSE") and the Pacific Stock Exchange ("PSE"). Consequently the proposed rule change would equalize the processing time among the exchanges. The Commission continues to recognize the importance of creating an effective balance between a customer's need to receive the best possible execution price and his need for timely execution. In addition, because the CSE is an automated exchange, market makers must always display the best quotes at which they are willing to trade, and thus, no specific order exposure period is needed for price improvement.

Notice of the proposed rule change was given on June 27, 1988, in Securities Act Release No. 25858 (53 FR 25031, July 1, 1988). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17689 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25952; File No. SR-NASD-88-21]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 15, 1988,[1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Article III, Section 21 of the NASD's Rules of Fair Practice to require the marking of customer order tickets for each transaction in a non-NASDAQ security to reflect the dealers contacted, and the quotations received, to determine the best inter-dealer market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25831, June 22, 1988) and by publication in the **Federal Register** (53 FR 24389, June 28, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17732 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

[1] On July 15, 1988, the NASD filed a letter amendment for the purpose of providing the results of the NASD membership vote approving the proposed rule change.

[Rel. No. IC-16510; 812-7043]

Australia and New Zealand Banking Group Limited; Notice of Application

July 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for amended exemptive order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Australia and New Zealand Banking Group Limited ("ANZ")

Relevant 1940 Act Sections: Exemptions requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant has previously received an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale of its debt securities (Investment Company Act Release No. 13937 (May 9, 1984)). The Applicant seeks an amended order exempting it from all provisions of the 1940 Act in connection with the order and sale of its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts, rights and other convertible or equity related securities ("Equity Securities").

Filing Date: The application was filed on June 1, 1988, and an amendment to the application was filed on July 28, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request must be received by the SCE by 5:30 p.m., on August 22, 1988. Request in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for 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. ANZ, c/o David M. Huggin, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel at (202) 272-3030, 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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is the second largest "trading bank," by total assets, licensed under the Banking Act 1959 of the Commonwealth of Australia to carry on the business of banking in Australia. ANZ's principal business is to receive deposits and make loans. In addition, ANZ conducts or engages in, either directly or through subsidiaries, a savings bank business, the provision of credit, lease and mortgage finance, factoring, merchant banking, insurance, travel, trust and investment services and share and stockbroking. The Applicant provides retail banking services throughout Australia, New Zealand and India as well as through a network of international branches. At September 30, 1987, the Applicant had total assets, on a consolidated basis, of A$65.3 billion.

2. The Applicant is subject to regulation by Australian and United States banking authorities by virtue of its activities in those countries as well as regulatory authorities in other jurisdictions in which it operates branches or representative offices.

3. The Applicant wishes to offer and sell its Equity Securities in the United States. Such offers and sales may be accomplished through underwritten public offerings or made pursuant to an exemption from registration under the Securities Act of 1933, as amended (the "1933 Act").

4. Exempting the Applicant from all provisions of the 1940 Act in connection with the issue and sale in the United States of its Equity Securities is necessary or appropriate in the public interest; is consistent with the protection of investors; and is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested exemptive order is granted, the Applicant agrees to the following conditions:

1. Any future offering of its Equity Securities in the United States will be made on the basis of disclosure documents which are appropriate and customary for such offerings whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom.

2. In connection with any offering of its Equity Securities in the United

States, the Applicant will irrevocably appoint a United States person as agent to accept process in any action based on the offer and sale of such securities instituted in any state or federal court located in New York City by a holder thereof. ANZ will expressly submit to the jurisdiction of any such court for the purposes of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding. Applicant undertakes that, so long as such securities remain outstanding, it will appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise in connection with such securities.

3. Applicant undertakes with regard to public offerings of debt or Equity Securities that are not issued in the United States or sold to U.S. persons in primary offerings (but where, because of factors such as the development of a secondary market in the securities, there is a reasonble possibility that such debt or equity securities could be offered in the United States or to U.S. persons), that Applicant will adopt agreements and procedures reasonably designed to prevent such securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise in permissible).

4. The Applicant will only issue Equity Securities in the United States so long as it is supervised and examined by governmental authorities in Australia having the power of supervision of banks in that country and by state and federal authorities in the United States having the power and supervision of banks in this country. The Applicant also represents that it has no present intention to curtail its banking activities in the United States so that it will cease to be regulated as a bank in the United States. If, however, such operations in the future are curtailed, so that Applicant is no longer regulated as a bank in the United States, the Applicant agrees that it will continue to compy with its undertaking concerning appointment of an agent and submission to jurisdiction, as set forth in the application, until such time as there shall be no holders in the United States of Equity Securities of the Applicant issued in reliance upon any SEC order made pursuant to the application.

5. Applicant represents that there is no present intention to curtail its banking operations in Australia so that it will cease to be regulated as a bank in Australia.

6. Applicant consents to any SEC order being expressly conditioned on its compliance with the undertakings and representations contained in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17733 Filed 8-4-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OBM Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements 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..

DATE: Comments should be submitted on or before September 6, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Score and ACE Application for Membership.

Form Nos.: 610.

Frequency: On Occasion.

Description of Respondence: The form is completed by individuals desiring membership in the SCORE/ACE program. The information in used by SBA and SCORE to match the members skills with the counseling and/or training needs of the small business community.

Annual Responses: 2800.

Annual Burden Hours: 700.

William A. Cline,

Chief, Administrative Information Branch.

[FR Doc. 88-17712 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5376]

Intergroup Funding Corp.; Surrender of License

Notice is hereby given that Intergroup Funding Corp., 230 Park Avenue, New York, New York 10169 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Intergroup Funding Corp., was licensed by the Small Business Administration on August 7, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on July 21, 1988, and accordingly, all rights, privileges, and franchises derived therefore have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-17713 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 10:00 a.m. on Tuesday, August 16, 1988 at the Kenan Center at the University of North Carolina at Chapel Hill, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300,

Charlotte, North Carolina 28202, (704) 371-6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 28, 1988.

[FR Doc. 88-17714 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0213]

Caribank Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing small business investment companies (SBICs) (13 CFR 107.601 (1988) for a transfer of ownership and control of Caribank Capital Corp (CCC), 2400 E. Commercial Boulevard, Suite 814, Ft. Lauderdale, Florida 33308, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as Amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of CCC, which was licensed July 7, 1982, is subject to the prior written of SBA.

The transfer of ownership and control relates to the proposed purchase of 100 percent of the outstanding shares of common stock of CCC by Quantum Partners, Ltd. (Partners), a limited partnership organized under the Laws of the State of Florida, from Caribank, a Florida banking corporation.

Proposed owners of Quantum Partners, Ltd., are as follows:

Name	Position	Percentage of ownership
Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308.	General partner.	18.25
Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248.	....do....	1.00
Sunwestern Investment Fund II, Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251.	Limited partner.	61.425
Sunwestern Investment Company (1984) Ltd., Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251.	....do....	17.325
Elaine E. Healey, 7505 N.W. 33rd Street, Lauderhill, Florida 33319.	....do....	2.00

Once Partners acquires the common stock of CCC, the stock ownership will be exchanged for a limited partnership interest in Quantum Capital Partners Ltd. (Capital Partners), a newly organized limited partnership, which will operate as the SBIC.

Proposed owners of Capital Partners are as follows:

Name	Position	Percentage of ownership
Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308.	General partner.	1.00
Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248.	....do....	1.00
Quantum Partners Ltd., 2400 E. Commercial Blvd., Suite 814, Ft. Lauderdale, Florida 33308.	Limited partner.	98.00

Owners of Quantum Partners Ltd. are as follows:

Name	Position	Percentage of ownership
Michael E. Chaney, 4400 N.E. 25th Street, Ft. Lauderdale, Florida 33308.	General partner.	18.25
Sunwestern Investment, Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251.	Limited partner.	61.425
Sunwestern Investment Company (1984) Ltd., Three Forest Plaza, Suite 1350, 12221 Merit Drive, Dallas, Texas 75251.	....do....	17.325
Elaine E. Healey, 7505 N.W. 33rd Street, Lauderhill, Florida 33319.	....do....	2.00
Thomas W. Wright, 6019 Twin Coves, Dallas, Texas 75248.	....do....	1.00

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in the Dallas, Texas and Ft. Lauderdale, Florida areas, respectively.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-17715 Filed 8-4-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental Affairs

[Public Notice 1077]

U.S. National Committee for Man and the Biosphere Request for Proposals—FY 1989

For Further Information Contact: Executive Director, U.S. Man and the Biosphere Program, OES/ENR/MAB, Department of State, Washington, DC 20520.

Introduction

The U.S. National Committee for the Man and the Biosphere Program (U.S. MAB) hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in fiscal year 1989, contingent upon the availability of funds.

Scientists are encouraged to collaborate in developing new interdisciplinary proposals and to seek complementary funds from other sources. Proposed research and projects, such as symposia, workshops or other activities which further the MAB objectives, may be spread over several years.

Proposed ideas must first be submitted as a two- to three-page prospectus to be reviewed for its responsiveness to this Request by one or more U.S. MAB Directorates. U.S. MAB Directorate endorsed prospectuses will be reviewed by the U.S. National Committee. The National Committee will then identify which projects should be submitted as full proposals for U.S. MAB's peer review process.

Priority will be given to projects requesting $50,000 or less when endorsed by a single Directorate, or a maximum of $100,000 for a project endorsed by two or more Directorates. U.S. MAB will not pay overhead fees on grants of $50,000 or less.

Criteria for Research Themes, Target Areas and Policy Relevance

The U.S. National Committee seeks proposals for research and projects on one or more of the following MAB orientations:

1. Ecosystems functioning under different intensities of human impact.
2. Management and restoration of human-impacted resources.
3. Human investment and resource use.
4. Human response to environmental stress.

It is recommended that all scientists who intend to participate review the *Final Report of the General Scientific Advisory Panel*, MAB Report Series No. 59, before commencing work on proposals. This report is available from the U.S. MAB Secretariat.

Preference will be given to proposals which concentrate on one or more of the following target areas:

- Biosphere reserves.
- Biological diversity.
- Global climate and ecological change.
- The biomes or ecotones of the arctic, arid lands or tropics.
- Sustainable/integrated development.

Preferably, projects would examine at least one of the four themes in at least one of the above target areas, and deal with policy issues relevant to U.S. MAB supporting agencies.

Format, Application and Processing Procedures

Prospectuses may not exceed three pages and must be accompanied by a summary two-page biographic sketch of the potential principal(s) that includes exceptional qualifications and a list of relevant publications. Early submission during August, September, or October is encouraged. Mail prospectuses to the U.S. MAB Secretariat, OES/ENR/MAB, U.S. Department of State, Washington, DC 20520. No prospectuses will be accepted after November 1, 1988. Prospectuses will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorates.[1]

Directorates will review prospectuses for endorsement based on the prospectuses' responsiveness to this call, relevancy to the U.S. MAB Program and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch. Directorates will review all prospectuses by December 1, 1988.

Prospectuses endorsed by a Directorate, or Directorates, will be forwarded to the U.S. National Committee for MAB for review. At its January 6, 1989 meeting, the National Committee will further review all prospectuses for their relevance to the U.S. MAB Program priorities and to the policies of U.S. MAB's supporting agencies. The National Committee will then determine which potential principal(s) may submit a full proposal.

Full project and research proposals must be received in the U.S. MAB Secretariat by close of business, May 1, 1989. Proposal texts must not exceed 30 double-spaced pages, excluding a concise two-page executive summary describing the objective of the proposed effort and the method of approach, accompanying bibliographies and curriculum vitae of the principals. An executive summary must clearly establish that the proposed activities are relevant to at least one of the four MAB orientations, one of the target areas, and the policy concerns of the relevant U.S. MAB supporting agency(ies). Each proposal must contain a letter of endorsement from a U.S. MAB supporting agency.[2] All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; and (3) specified products which will result from the grant. Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the activities. Full proposals will be subject to an administrative review for adherence to listed requirements and if deficiencies are found, will be returned without further consideration.

Project Peer Review, Ranking And Funding Process

Appropriate U.S. MAB Directorates and peer reviewers, including discipline specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate and rate the proposals on the basis of their intrinsic scientific merit and intellectual focus. Directorates and reviewers will also assess a proposal's potential to increase scientific understanding and provide the basis for policy development by U.S. MAB's supporting agencies. Directorates and peer reviewers will consider, in their overall assessments of the proposals, the performance competence of the principals and the adequacy of the proposed resources to accomplish the objectives.

A final ranking of the proposals will be made by the U.S. National Committee for the Man and the Biosphere Program based on all of the above factors and their assessment of the proposals' relevancy to U.S. MAB's supporting agencies. Proposals will then be funded in order of their assigned rank according to available funds.

Principals will receive copies of all peer review evaluations made of their porposals and written notification of the Committee's decisions on their projects. Winning proposals become part of the public domain. Proposals not selected by the National Committee for funding will then be returned to the authors.

The National Committee will notify all principals of its final decisions in July 1989. Funds will be committed to the managing institutions identified in the selected proposals by September 30, 1989.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program.

August 2, 1988.

[FR Doc. 88-17661 Filed 8-4-88; 8:45 am]

BILLING CODE 4710-09-M

[1] *Active U.S. MAB Directorates:*

MAB-1 Tropical Forests
MAB-2 Temperate Forests
MAB-3 Grazing Lands
MAB-4 Arid/Semiarid Lands
MAB-5 Fresh Water Resources
MAB-6 Arctic Ecosystems
MAB-7 Island Ecosystems (Caribbean)
MAB-8 Biosphere Reserves
MAB-11 Urban Ecosystems
MAB-13 Human Issues & Environmental Change
MAB-14 Pollution

[2] *U.S. MAB Sponsoring Agencies:*

U.S. Department of State
Smithsonian Institution
U.S. Department of Agriculture
U.S.D.A. Forest Service
U.S.D.I. National Park Service
Peace Corps
National Aeronautics and Space Administration
National Oceanic and Atmospheric Administration
National Science Foundation
U.S. Agency for International Development

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR

302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45726

Date Filed: July 25, 1988.

Due Date for Answers, Confroming Applications, or Motion to Modify Scope: August 22, 1988.

Description: Application of Arawak International Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience to engage in foreign air transportation of persons, property, and mail to transport passenger and cargo service between the following points: New York—Georgetown; New York—Santo Domingo; and New York-Nigeria.

Docket No. 45730

Date Filed: July 27, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 24, 1988.

Description: Application of Papair, pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to operate charter and non-scheduled cargo services between the points of Port-au-Prince, Haiti and Miami, Forida in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-17722 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket 45739]

SFO Helicopter, Inc., Reporting Violations Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-17723 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 88-059]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Manning and Licensing will meet on August 30, 1988 in Room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. The agenda for the meeting follows:

(a) Supplemental Notice of Proposed Rulemaking on the Licensing of Pilots, and

(b) Pilotage Routes for the "Acting as" Pilot.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street, SW., Washington, DC 20593-0001 or by calling (202) 267-0449.

Dated: July 29, 1988.

R. J. Asaro,

Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88-17627 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147 (26th Meeting)—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 26th meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held August 16-18, 1988, in the RTCA Conference Room, One McPherson Square 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of this 25th meeting, (3) TCAS Program status reports, (4) reports on TCAS II activities, (5) reports on TCAS III activities, (6) reports on TCAS technical studies, (7) discussion of SC-147 plans and schedule, (8) TCAS II Logic Working Group Meeting in separate session, (9) other business, and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 1988

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-17752 Filed 8-4-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160 (10th Meeting)—406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 10th meeting of RTCA Special Committee 160 on 406 MHZ Emergency Locator Transmitters (ELT) to be held Autust 24-26, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of minutes of the 9th meeting, (3) review and discuss EUROCAE WG-29 activities, (4) reports on problems of frequency interference in the 406 MHz band, (5) review flame/fire test criteria, (6) review self-test feature of ELT's, (7) review of task assignments from last meeting (8) review of the sixth draft of the MOPS, (9) task assignments, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500,

Washington, DC 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–17753 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Adminstration

Announcing the Third Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for Wednesday, August 31, 1988, from 10:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 6332 of the U.S. Department of Transportation Building, which is lcoated at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Reserach Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety reserach, and provide a forum for the development, consideration, and communication of motor vehicle safety reserach, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will focus on crash avoidance modeling and test procedures. Discussions will cover: Available data on the nature, scope, and magnitude of the problem; test facilities and test procedures; analytical computer models; and the technical literature that forms the basis of the above.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Rollover Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street SW., Room 6208, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: August 2, 1988.

Kennerly H. Digges,

Chairman, Rollover Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88–17642 Filed 8–4–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0127
Form Number: FFIEC 001 and FFIEC 006
Type of Review: Extension
Title: Annual Report of Trust Assets/ Special Report-Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary Activities
Description: Collected data are needed to determine types, extent, and financial viability of fiduciary activities. Data are used to analyze, supervise, and examine back fiduciary activities. Analytical reports are prepared from the data. National banks authorized to exercise fiduciary powers are the affected public.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 3,675
Estimated Burden Hours Per Response: 5 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 18,202
Clearance Officer: John Ference, (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal, (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–17734 Filed 8–4–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0099
Form Number: None
Type of Review: Extension
Title: Foreign Shipper's Declaration
Description: The declaration is used by Customs to determine whether or not tariff items 800.00 or 805.00 apply for duty free entry of articles being imported into the U.S.
Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents: 600
Estimated Burden Hours Per Response: 13 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 19,449 hours

OMB Number: 1515–0108

Form Number: None
Type of Review: Extension
Title: Declaration by Person Abroad Who Received and is Returning Merchandise to the U.S.
Description: The declaration is used under conditions when articles are imported and exported and reimported, and are brought in duty free into the U.S. to insure Customs control over duty-free merchandise.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 292 hours
Clearance Officer: B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–17735 Filed 8–4–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of Treasury has submitted the following public informatin collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Nmber: 1545–0129
Form Number: IRS Form 1120–POL
Type of Review: Revision
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Form 1120–POL is used by certain political organizations to report the tax imposed by Internal Revenue Code (IRC) section 527. The form is used to designate principal campaign committees that are subject to a lower rate of tax under IRC section 527(h). IRS uses this information to determine whether the tax is being properly reported.
Respondents: Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 4,000
Estimated Burden Hours Per Response: 2 hours and 43 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 13,530 hours

OMB Nmber: 1545–0130
Form Number: IRS Form 1120S, Schedule D (Form 1120S) and Schedule K–1 (Form 1120S)
Type of Review: Revision
Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses and Built-In Gains, and Shareholder's Share of Income, Credits, Deductions, etc.—1988
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S Corporation to figure its tax liability; and income and other tax-related information to pass through to its shareholder's. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S Corporation and its shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 904,631
Estimated Burden Hours Per Response:
Form 1120S—8 hours and 35 minutes
Schedule K–1 (Form 1120S)—29 minutes
Schedule D (Form 1120S)—1 hour and 37 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 10,132,156 hours
OMB Nmber: 1545–0687
Form Number: IRS Form 990–T
Type of Review: Revision
Title: Exempt Organization Business Income Tax Return
Description: Form 990–T is needed to compute the IRC sectin 511 tax on unrelated businesses income of a charitable organization. IRS uses the information to enforce the tax
Respondents: Non-profit institutions
Estimated Number of Respondents: 27,400
Estimated Burden Hours Per Response: 10 hours and 18 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 293,173 hours

OMB Nmber: 1545–0895
Form Number: IRS Form 3800
Type of Review: Revision
Title: General Business Credit
Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit carryfoward. Form 3800 is used to figure the correct credit.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 200,000
Estimated Burden Hours Per Response: 25 mintues
Frequency of Response: On occasion
Estimated Total Reporting Burden: 84,760
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–17736 Filed 8–4–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 2, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. This correction is submitted to change the *Estimated Burden Hour Per Response* for FR Doc. 88–15492, Filed 7–8–88; 8:45 am.

Internal Revenue Service

OMB Number: 1545–0085
Form Number: IRS Form 1040A
Type of Review: Revision

Title: U.S Individual Income Tax Return Organizations
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.
Respondents: Individuals or households
Estimated Number of Respondents: 21,447,413
Estimated Burden Hours Per Response: 1 hour and 8 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 21,745,403 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88–17737 Filed 8–4–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 1, 1988.

The Department of Treasury has submited the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0200
Form Number: 5307
Type of Review: Revision
Title: Short Form Application for Determination for Employee Benefit Plan (Other Than Collectively Bargained Plans) (Under sections 401(a) and 501(a) of the Internal Revenue Code)
Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office of a field prototype plan approved by an IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue code sections 401(a) and 501(a) and ERISA (Public Law 93–406). It may not be used to request a ruling for collectively bargained plans.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of respondents: 39,000
Estimated Burden Hours Per Response: 1 hour and 39 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 89,747 hours

OMB Number: 1543–0975
Form Number: 1120–W
Type of Review: Revision
Title: Corporation Estimated Tax
Description: Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of respondents: 913,997
Estimated Burden Hours Per Response: 34 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 516–033 hours

OMB Number: 1545–0998
Form Number: 8615
Type of Review: Revision
Title: Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000
Description: Under Section 1(i) of the Internal Revenue Code, children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households
Estimated Number of respondents: 750,000
Estimated Burden Hours Per Response: 50 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 624,075 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–17738 Filed 8–4–88; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 151
Friday, August 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, August 9, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities.

Wachovia Bank and Trust Company, National Association, Winston-Salem, North Carolina, for consent to purchase the assets of and assume the liability to pay deposits made in North Wilkesboro Federal Savings and Loan Association, North Wilkesboro, North Carolina, a non-FDIC-insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 48,240
Bossier City Consolidated Office, Bossier City, Louisiana

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Status report on bank examination frequency.

Memorandum and resolution re: Amendment to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which eliminate improvement, repair or maintenance loans, including home equity loans for these purposes, from existing "home loan" data-gathering requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: August 2, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-17755 Filed 8-2-88; 5:01 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, August 9, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion on those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
The Trust Bank, Hialeah, Florida (Memo dated July 15, 1988)
Audit Report re:
Oak Lawn Consolidated Office, Cost Center 201 (Memo dated June 17, 1988)
Audit Report re:
Knoxville Consolidated Office, Cost Center 503 (Memo dated June 30, 1988)
Audit Report re:
Atlanta Regional Office, Cost Center 100/110 (Memo dated June 17, 1988)
Audit Report re:
Review of Financial Operations Unit's Processing of Travel Vouchers (Memo dated June 30, 1988)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsectins (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsectins (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: August 2, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-17756 Filed 8-2-88; 5:01 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Monday, August 1, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement

pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550 —17th Street, NW., Washington, DC.

Dated: August 3, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-17831 Filed 8-3-88; 4:05 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:38 p.m. on Tuesday, August 2, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,235
The Bowery Savings Bank New York City (Manhattan), New York
Case No. 47,238
Banks from the New York, Dallas, Atlanta, and San Francisco Regional Offices

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: August 3, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-17832 Filed 8-3-88; 4:05 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

[Federal Register No. 88-17140]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 4, 1988, 10:00 a.m.

THE FOLLOWING ITEM REMOVED FROM THE AGENDA: Regulations at 11 CFR 110.1–110.6—Affiliation and Earmarking.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Draft AO 1988–28:
Paul Suplizio Associates on behalf of Tele/900 Inc., dba Teleline
(Continued from Meeting of July 28, 1988.)

* * * * *

DATE AND TIME: Tuesday, August 9, 1988.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, August 11, 1988.

PLACE: 999 E Street, NW., Washington DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Status of Presidential Audits
Draft AO 1988–30:
Kathy Gibson on behalf of First Florida Partners For Good Government
Draft AO 1987–31: (Reconsideration)
Terry L. Claassen on behalf of the Chicago Board Options Exchange
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-17746 Filed 8-2-88; 4:29 pm]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 2, 1988.

TIME AND DATE: 10:00 a.m., Thursday, August 4, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following:

3. *Western Fuels-Utah, Inc.*, Docket Nos. WEST 87–166–R, etc. (Issues include consideration of a petition for discretionary review.)
4. *Mid-Continent Resources, Inc.*, Docket No. WEST 87–88. (Issues include consideration of a petition for discretionary review.)
5. *H. B. Zachry Company*, Docket No. CENT 88–29–M. (Issues include consideration of a petition for interlocutory review.)

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and that no earlier announcement of the additions were possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629 / (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-17830 Filed 8-3-88; 4:05 pm]

BILLING CODE 6535-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 10, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed changes to Regulation CC (Availability of Funds and Collection of

Checks) regarding the definition of "paying bank".

2. Proposals concerning Regulation CC (Availability of Funds and Collection of Checks): (1) Preemption determinations regarding funds availability laws of Illinois, Maine, and New York (proposed earlier for public comment; Docket No. R–0640); and (2) publication for comment of proposed preemption determinations for Connecticut, Rhode Island, New Mexico, and California.

3. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to make certain foreign debt securities marginable. (Proposed earlier for public comment; Docket No. R–0633).

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–17778 Filed 8–3–88; 11:08 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 10, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

Date: August 3, 1988.

[FR Doc. 88–17779 Filed 8–3–88; 11:08 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 53, No. 151
Friday, August 5, 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8136]

Summer Flounder Fishery

Correction

In proposed rule document 88-16360 beginning on page 27536 in the issue of Thursday, July 21, 1988, make the following correction:

On page 27540, in the third column, in the file line at the end of the document, "Filed 7-20-88; 8:45 am" should read "Filed 7-20-88; 12:07 pm".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-08-4212-13; IDI-23782]

Realty Actions; Sales, Leases, etc.; Idaho

Correction

In notice document 88-16443 appearing on page 27906 in the issue of Monday, July 25, 1988, make the following corrections:

1. In the second column, in the 21st line, "General" should read "Gerald".

2. Also in the same column, the 28th line should read, "Sec. 23, NE¼NE¼, NE¼SW¼; NE¼NW¼, S½NW¼.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 57797; (MT-020-08-4212-13)]

Montana; Amended Notice of Realty Action

Correction

In notice document 88-15771 appearing on page 26678 in the issue of Thursday, July 14, 1988, make the following correction:

In the third column, under "T. 5 N., R. 3 E.", the eighth line should read "Sec. 34, MS1796".

BILLING CODE 1505-01-D

federal register

Friday
August 5, 1988

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

7 CFR Parts 704, 795, 1497, and 1498
Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities To Receive Program Benefits; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 704, 795, 1497, and 1498

Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities To Receive Program Benefits

AGENCY: Commodity Credit Corporation (CCC) and Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the proposed rule published in the **Federal Register** on April 6, 1988 (53 FR 11474). This final rule sets forth at 7 CFR Part 1497 the regulations which will be used in limiting the making of specified payments which are made in accordance with: (1) Price support and production adjustment programs for the 1989 and 1990 crops; and (2) Conservation Reserve Program contracts executed after December 22, 1987. This final rule also sets forth at 7 CFR Part 1498 the regulations which will be applied in determining whether a foreign individual or entity is eligible to receive certain payments, loans, and benefits. These regulations are issued as required by amendments to the Food Security Act of 1985 which were made by the Omnibus Budget Reconciliation Act of 1987 and will bring payment limitation rules into conformity with Subtitle C of the Agricultural Reconciliation Act of 1987. Conforming amendments are also made to 7 CFR Parts 704 and 795.

DATES: Effective on August 1, 1988.

FOR FURTHER INFORMATION CONTACT: H.E. Maynard, Director, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. 202–447–7641.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this final rule applies are: Commodity Loan and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065; and Conservation Reserve Program—10.069 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

Statutory Background

Maximum payment limitations for commodity programs were first mandated by section 101 of the Agricultural Act of 1970. This Act provided for such restrictions with respect to the 1971 through 1973 crops of wheat, feed grains, and upland cotton. Subsequent legislation expanded the application of similar restrictions to subsequent crops of these commodities as well as rice and extra long staple cotton. The most recent payment limitation provisions were authorized by Section 1001 of the Food Security Act of 1985 (the "1985 Act").

The Agricultural Reconciliation Act of 1987 (the "1987 Act"), as included in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 99–203, amended the 1985 Act with respect to the application of maximum payment limitation restrictions to certain agricultural price support, production adjustment and conservation programs. The amendments made by the 1987 Act are effective for the 1989 and 1990 crops of wheat, feed grain, rice, upland and extra long staple cotton, honey, and any other commodity for which a price support loan program is established under the Agricultural Act of 1949, as amended (the "1949 Act"), which allows a producer to repay such a loan at less than the original loan level. The amendments are applicable to any conservation reserve program contract entered into on or after December 22, 1987 but are not applicable to such contracts entered into before that date.

Section 1001(1) of the 1985 Act provides that, with respect to each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any payment which is the result of any reduction in the price support rate for wheat or feed grains under section 107D(c)(1) or 105C(c)(1) of the 1949 Act, respectively, i.e., a "Findley payment") and land diversion payments that a person may receive under one or more of the annual programs established under the 1949 Act for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

Section 1001(2) of the 1985 Act provides that for each of the 1987 through 1990 crops the total amount of the following payments that a person may receive under one or more of the annual programs established under the 1949 Act for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey and any other commodity with respect to which producers may repay a loan at less than the original loan level may not exceed $250,000: (1) Deficiency payments; (2) diversion payments; (3) any part of any payment that is determined by the Secretary to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation; (4) disaster payments; (5) any gain realized by a producer from repaying a price support loan at less than the original loan level; (6) Findley payments; (7) loan deficiency payments; and (8) inventory reduction payments.

As originally enacted, the 1985 Act required the Secretary to issue regulations defining the term "person" and to provide for such rules as the Secretary determines necessary to assure a fair and reasonable application of the maximum payment limitations of the 1985 Act. However, the 1987 Act made significant amendments to the 1985 Act by: (1) Specifying the requirements that must be met by participants in various agricultural programs in order for such participants to be considered to be a person who is eligible to receive the above specified program payments; (2) generally limiting the amount of benefits which a farming operation may receive if an individual or entity who is a program participant has an interest in two or more entities which are engaged in farming operations; (3) providing that foreign individuals and entities would be ineligible to receive specified agricultural program payments, loans, and benefits unless such individuals, or the individuals who own the entity, provide a substantial amount of personal labor in the

production of crops on the farm owned or operated by the individual or entity.

Accordingly, this final rule sets forth at 7 CFR Part 1497 the regulations which define the term "person" for purposes of applying the maximum payment limitation provisions of the 1985 Act. This final rule also sets forth at 7 CFR Part 1498 the regulations which would be applicable in determining whether foreign individuals or entities are eligible to receive specified program payments, loans, and benefits.

As discussed below, the provisions of the final rule will not be applicable to the Agricultural Conservation Program; the Emergency Conservation Program; the Forestry Incentive Program; the Rural Clean Water Program; or the Colorado River Salinity Control Program.

Discussion of Comments and Changes

In response to the proposed rule issued on April 6, 1988, 365 timely filed letters containing 893 comments were received. Respondents included the following: 133 individuals, 24 corporations, 22 commodity groups and similar organizations, 3 state agencies, 4 colleges and universities, 3 Certified Public Accountants, 12 ASCS employees, 7 attorneys, 6 financial institutions, 2 cooperatives, 4 foreign embassies, 2 foreign individuals, 5 farm management companies, 8 general farm organizations, 2 foreign representatives, 1 representative of an Indian tribal venture, 1 Indian tribal venture, 4 limited partnerships, 2 Members of Congress, and 8 general partnerships. Some respondents sent more than one letter. Comments were received from persons in all States, except Michigan, Connecticut, Maine, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, West Virginia, Alaska, Wyoming, Alabama, Florida, Kentucky, Puerto Rico, Hawaii, Nevada, Oklahoma, and Utah.

Fourteen comments were received which did not directly relate to the substance of the proposed rule or that made suggestions regarding editorial and grammatical corrections. Numerous minor editorial changes have been made in the text of the regulations for clarity and to facilitate the application of the regulations.

The discussion that follows is organized in the same sequence as the final rule.

Section 1497.1 Applicability.

Comments were received from 87 respondents on this section of the proposed rule. The comments ranged from a statement that there should not be any limitation on payments to a statement that there should not be any payments. Other commentators felt that only bona fide farmers should receive payments. Several respondents stated that shareholders in a corporation should be eligible to receive payments just like members of a partnership. Some comments stated that payments should never go to corporations, and others that a corporation should never get more than $50,000. One commentator felt that only entities fully owned by family farmers should be eligible to receive payments. Twenty-seven respondents stated that they felt that payment limitations were very unfair and that payment limitations put a burden on large efficient farmers. One respondent stated that the payment limitation program has been abused and that it may be legally correct but it is morally wrong and goes against the original intent of the production adjustment programs. Several respondents stated that all payments should be targeted to producers on small and medium sized family farms or to those producers on farms that are financially stressed. Several commentators stated that the payment limitation program should be kept in place and strongly enforced. Another respondent felt that in many cases the payment limitation rules have forced landowners to cash rent rather than share rent land, which has increased the risk for the producers who are renting land. Some respondents felt that the limits were too high, others that they were too low. One commentator stated that payment limitation provisions go against American principles. Another commentator felt limitation levels should be raised as other government outlays are raised. Nine respondents stated that they felt the USDA should move away from making direct payments to farmers and let farmers receive their income solely from the marketplace. One commentator felt that if payments were limited to one payment per social security number that the system would be easily implemented. Another commentator requested more examples of the manner in which the regulations would be implemented should be set forth in the final rule.

In order to clarify the manner in which these regulations will be implemented, more examples have been provided in the publication of the final rule. Comments received on this section of the proposed rule were primarily of a philosophical nature in which many respondents expressed their feelings regarding legal issues surrounding payment limitations. Since the 1985 Act specifically states which producers are eligible to receive payments and the manner in which payment limitation provisions will be administered, there is no authority for the Secretary to implement these general philosophical changes. Based upon a review of the programs which, as provided in the proposed rule, would have been subject to these regulations, it has been determined for some programs the implementation of payment limitation provisions can be more easily and fairly administered separate from the payment limitation provisions of 7 CFR Part 1497. Accordingly, the final rule adopts the proposed rule for this § 1497.1 except that the programs listed at § 1497.1(a)(4) through § 1497.1(a)(8) are excluded from this final rule and all references to these programs have been deleted. The programs deleted are the Agricultural Conservation Program, the Emergency Conservation Program, the Forestry Incentive Program, the Rural Clean Water Program, and the Colorado River Salinity Control Program. Payment limitations which are applicable to these programs will continue to be determined in accordance with the provisions of 7 CFR Part 795.

Section 1497.2 Administration.

A total of 29 comments were received on this section. Comments received on this section of the proposed rule dealt with a number of general issues, including the concern that the requirements of the proposed rule would constitute an invasion of a producer's privacy and that, in order to administer the rules as proposed, the Department would need to hire a substantial number of additional employees. Other commentators felt that Department employees should be allowed to give producers advice on how best to meet the requirements of the proposed rule. Still other respondents stated that the Department should not require legal documentation to support a producer's status as a "person." One respondent stated that the Department should very specifically define the nature and extent of records producers will be required to maintain to meet the requirements of the proposed rule. Another commentator stated that the Department will need to have an early commodity program sign-up in order to complete all determinations for the 1989 program year. One commentator felt determinations made by county ASC committees should not be subject to reversal by a higher authority, except in the case of fraud or deception. Another commentator felt that to require all producers to provide information on their operations was unnecessary.

ASCS employees are instructed to provide all information necessary to enable a producer to make an informed decision on how the rules regarding payment limitations will affect the producer's farming operation. In order to ensure that only the producer makes the decisions which affect the producer's farming operation, ASCS employees are not instructed to provide specific advice to a producer on exactly how to structure an individual producer's farming operation. A concerted effort has been made in both the proposed and the final rule to adequately define the information that producers will need to support their "person" determinations. It is the intention of CCC and ASCS that ASCS employees begin making determinations that will have to be done for the 1989 program year as soon as this rule becomes effective. The regulations at 7 CFR Part 780 set forth an administrative appeal procedure which has worked well for many years and which provides producers a fair method of settling disputes concerning the administration of CCC and ASCS programs. ASCS has also provided that if a county or State ASCS official has made an erroneous determination, a higher reviewing authority may correct the error in order to ensure that programs are administered in an equitable and legal manner. However, equitable relief may be granted to a producer if the producer has taken action because of the incorrect determination. As amended by the 1987 Act, the 1985 Act provides that only producers who are "actively engaged in farming" are eligible to receive certain payments. Because of this requirement, it is necessary that sufficient information be obtained from all producers in order to make this statutorily required determination. In order to clarify the authority of the county ASC committee to request this information, the final rule provides in a new paragraph at § 1497.2(g) that producers are required to provide documentation to the applicable county ASC committee which will enable such committee to make the necessary determinations.

In the final rule, two new paragraphs, § 1497.2 (e) and (f), have been added in order to facilitate determinations which are made with respect to producers who become incapacitated during the crop year and with respect to estates. The basis for these amendments is set forth in the discussion of comments on §§ 1497.4, 1497.12, and 1497.27.

Section 1497.3 Definitions.

A total of 267 comments were received concerning the definitions provided in this part. The comments are addressed as they relate to each individual definition.

Active personal labor. Seventeen comments were received with respect to this definition. Several of the comments stated that the definition was not realistic in that it is a good business practice to hire professional labor and that doing so should be considered active personal labor. Other commentators felt that the regulation should provide more guidelines on the kinds of activities which constitute active personal labor. Another commentator stated that the regulation should not be specific and that the Department's county and State ASCS employees should be left to determine what constitutes active personal labor. Another respondent felt that the definition in the proposed rule should be retained in the final rule.

Section 1001A of the 1985 Act provides an individual must provide "personal labor or active personal management" in order to be considered to be a "person" who is eligible to receive certain payments and with respect to the application of the statutory maximum payment limitation provisions. Accordingly, through the use of the word "personal," hired labor may not be used to meet this requirement. In order to insure uniform application of this provision, it is important that sufficient guidelines be maintained with respect to what constitutes active personal labor. Accordingly, this definition has been expanded in the final rule. The proposed rule only included activities normally associated with crop production and the definition has been amended in the final rule to set forth activities involving livestock operations and conservation operations which will also meet the definition. For clarification purposes, the definition has been changed to indicate that the items listed are not inclusive but rather are indicative of the type of activities that are considered to be active personal labor.

Active personal management. Twenty-two comments were received on this definition. Most of these comments expressed concerns relating to what exactly constitutes "active personal management." Some comments questioned what the phrase "any service reasonably necessary to conduct the farming operation" meant as it was used in item (2)(vi) of the definition. Some commentators felt that it was going to be very difficult to determine where labor stopped and management began. Other commentators felt that personally hiring management should meet the definition of active personal management. Comments were received which expressed a need to expand the definition to include activities related to promotion and marketing, the hiring and firing of personnel, and providing knowledgeable technical advice to a farming operation. Two commentators felt that the definition should be retained as written.

The 1987 Act amendments provided that if a person is providing management activities in a farming operation that such activities must constitute active "personal" management in order for an individual to become actively engaged in farming and therefore, this precludes the inclusion of hired management in this definition. The proposed rule recognized that activities which constituted "management" would be difficult to determine and, therefore, the proposed rule attempted to provide for the making of a subjective decision regarding this issue by including the provisions set forth in item (2)(vi). This provision provided that county and State ASC Committees would analyze each individual producer's farming operation to determine what the producer was doing to manage the farming operation. The decision on hiring and firing of personnel is an important management decision and it has been determined that this factor will be included in item (2)(ii) of the final rule. This definition also has been changed in the final rule by expanding the activities which meet the definition of "active personal management" to include activities regarding the management of conservation acres, the marketing and promotion of agricultural commodities and the acquiring of technical information used in the farming operation. For clarification purposes, the definition has been changed to provide that the items listed are not inclusive but rather are indicative of the type of activities that are considered active personal management.

Capital. Three comments were received regarding the definition of "capital." Comments received expressed a desire to include the value of any labor or management which is contributed to the farming operation in the definition. One commentator suggested that the definition was unclear. One commentator requested a definition of the term "related entity" as it is used in item (3) of the definition. The commentators also expressed concern regarding the restrictions on who could provide financing for the necessary capital. These commentators stated that having all members of a joint

operation as signatories to a financing arrangement should not result in all members of the joint operation being considered to be one "person" because most lenders require all members of a joint operation to sign the financing agreement.

It has been determined that contributed labor or management should not be included as capital since it is not an out of pocket expense of the farming operation. Accordingly, this provision of the definition of capital has not been changed. It was not the intent of the proposed rule to consider several individuals to be one "person" solely on the basis that all members of a joint operation have signed the financing agreement. Rather, the proposed rule contemplates that the contribution of capital, land, or equipment which each member is using to meet the requirements of a significant contribution cannot be financed by another member of the joint operation or the joint operation itself. Accordingly, this definition has been changed in the final rule to provide that capital which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of capital is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate. For clarity, the definition of a "related entity" has been added to the final rule at § 1497.3.

Entity. Three comments were received regarding the definition of "entity." One commentator wanted to know how an association was to become actively engaged in farming. Another commentator felt that the definition should include farm families and one expressed the view that this definition was very close to the same as the definition of "person."

Under the proposed rule, an entity is any farming operation other than one conducted by an individual. Accordingly, there is nothing to prevent a farm family from organizing their farming operation as an entity. An association is treated the same as a corporation or limited partnership and the final rule has been amended at § 1497.9 to include other similar entities under that section.

Equipment. Two comments were received that expressed a desire to expand the definition of equipment to include owned and leased equipment and "rolling stock" such as trucks and cars. There is no limitation on whether the equipment which is contributed is owned or leased. Therefore, the proposed rule has been changed to clarify that the list of machinery in the definition of equipment is not inclusive and to expand the list to include machinery needed in livestock and conservation operations. However, mere ownership of an automobile or similar vehicle would not constitute equipment since such an asset is not necessary to the production of an agricultural commodity. The final rule also provides that equipment which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of equipment is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate.

Farming operation. For purposes of clarity the proposed rule has been changed to provide that a farming operation is a business enterprise engaged in the production of agricultural products.

Financing. Twenty comments were received with respect to "financing." Several comments expressed concern that the proposed rule was putting too many restrictions in place regarding family members and financing, and members of a joint operation and financing. Commentators also stated that the Department should only be concerned with crop financing related to program crops and not with financing of the entire farming operation. Several other comments were received on the proposed rule which expressed concern that the phrase "the provision of service or goods to such operation at less than the fair market value" was inserted to cause persons to be combined if there was a casual exchange of equipment between neighbors. Other commentators stated that the Department should put more restrictions on passive investors and less on new, young farmers. Several commentators stated that the term "financing" was not used in the proposed rule except in the definition and, therefore, should not be included in the final rule. Financing is used in the proposed rule with respect to the definitions of capital, land, and equipment which are set forth at § 1497.3. In effect, the proposed rule provides that the capital, land, or equipment which an individual contributes to meet the significant contribution requirements may not be financed by the farming operation or any individual or entity that has an interest in that farming operation. Such assets may be financed by an individual or entity that does not have any interest in that farming operation. In addition, it was the intent of the proposed rule that if an individual or entity made a contribution of capital, land, or equipment to a farming operation which was not being used to meet the significant contribution requirements, such contributions could be financed by anyone, including an individual or entity with an interest in the farming operation if it was financed at the prevailing interest rate. However, any contribution of capital, land, or equipment which an individual or entity made in order to meet the requirements of these provisions must not be financed by another member of the farming operation, the farming operation, or any related entity.

With respect to the family member provision provided for at § 1497.14, there is no requirement for an adult family member to make a contribution of capital, land, or equipment in order to be considered to be actively engaged in farming. Therefore, if an adult family member does make a contribution of capital, land, or equipment, such contribution of capital" land, or equipment may be financed by anyone, including a family member who has an interest in the farming operation. The casual exchange of equipment will not be considered as financing. The 1987 Act amendments require that, in order for a person to be eligible to receive payments such person must be actively engaged in farming. In order to be actively engaged in farming, the producer must contribute active personal management or active personal labor. This requirement will prevent abuse of programs by passive investors. However, the proposed rule has been changed to remove the definition of financing found at § 1497.3 since the term "financing" is not used in the regulation.

Land. Eight comments were received regarding the definition of "land." Comments were received which expressed the concern that land, in

order to meet the definition, should not be required to have "normal crop acreage bases for the farming area." Another commentator felt that if land produced a cash flow it should meet the definition of land.

In the final rule, the definition has been changed to provide that land is farmland. In some cases, to meet certain requirements of a program, land will be required to meet certain specifications such as if the land is enrolled in a program where crop acreage bases are used. To do otherwise could lead to the abuse of these programs by allowing producers to use land which does not offer the potential of being used for program purposes but is added to a farming operation solely to meet the substantive change requirements provided for at § 1497.18. The final rule provides that land which is used to meet the significant contribution provision cannot be financed by the farming operation or any individual or entity that has an interest in the farming operation. The final rule also provides that after an individual or entity has made a significant contribution of capital, land, or equipment if a contribution of land is used to make the individual's or entity's contribution commensurate with its claimed share of the operation and such contribution is financed by the farming operation or any individual or entity that has an interest in the farming operation such financing must bear the prevailing interest rate.

Person. Twenty-eight comments were received regarding the definition of "person." Commentators felt that the definition of a "person" should be the same that is used by the Internal Revenue Service (IRS). One felt that the IRS definition of "person" was "a warm body" and that the final rule should adopt that definition. Many felt that to allow a corporation to be considered to be only one "person" was very unfair to family farming corporations where there are many family members involved in the farming operation. Some commentators felt that no corporation or joint operation should be defined as a "person" eligible to receive payments. Several commentators felt that any entity not owned by family members should not be defined as a "person" and another commentator expressed the opinion that "person" was very well defined in the proposed rule and should not be changed in the final rule. Another commentator felt that to define a person as a "revocable trust together with the grantor of the trust" was not correct and was, in fact, in opposition to the language and intent of the 1987 Act. Several commentators felt that the requirement found at item (2) of the "person" definition, which called for the individual or entity to be responsible for their share of the costs related to the farming operation from a fund or account separate from any other individual or entity, was unfair and should be eliminated from the final rule. Others suggested that "payment entity" should be used instead of the term "person."

The 1987 Act amendments specifically define a "person" to include: "* * * (I) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary); (II) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); * * *." A corporation is defined as a "person" in the 1985 Act, as amended; therefore, a corporation cannot be eliminated from the definition in the regulation. Since 1971, a revocable trust has been considered to be one with the grantor because the grantor has the right to dissolve that trust at any time. The 1987 Act amendments do not provide that a revocable trust is a "person." Accordingly, the grantor of a revocable trust and the trust shall continue to be considered to be one person. It was not the intent of the proposed rule that the requirement that a person have a separate and distinct interest in the land or crop involved in the farming operation be used to combine individuals of a joint operation as one person in all instances. Accordingly, the proposed rule has been changed to provide that a joint operation's separate and distinct interest in the land or crop will meet the requirements of item (2) for the members of the joint operation.

Public School. Eleven comments were received which stated that this definition is overly restrictive and that publicly supported colleges and universities should be included in the definition of public school. One commentator felt that only land grant colleges and universities should be included as public schools.

The 1987 Act amendments provide that limitations on "* * * payments to any person shall not be applicable to land owned by a public school district or land owned by a State that is used to maintain a public school * * *." The phrase "public school district" is broad enough to include public schools at a level higher than a primary, elementary, or secondary school. Accordingly, it has been determined that the proposed rule was overly restrictive in its definition of public school and the final rule provides that the definition of "public school" found at § 1497.3 will include publicly supported colleges and universities.

Sharecropper. Six comments were received on this definition. Most stated that the definition was too restrictive in requiring that a sharecropper was an individual whose total payment for labor was to be the share of the crop. One respondent stated that a more normal situation involving sharecroppers provides that the individual sharecropper also receive some minimum wage during the year which is actually a draw on the individual's share of the crop.

A determination has been made that the proposed rule was too restrictive and this definition has been removed from the final rule. Accordingly, the definition of sharecropper currently set forth in 7 CFR Part 719 which is used in the administration of other program matters has been adopted for purposes of applying this part.

Significant contribution. A total of 135 comments were received with respect to this definition. Most stated that the requirement as applied to capital, land, and equipment should be a total 30 percent requirement whether a person contributed a combination of capital, land, or equipment or just one of the three. Several comments on the proposed rule were received which stated that it was incorrect to require stockholders in a farm corporation to contribute their labor and/or management without compensation. The commentators further stated that, if they were not paid a wage for their labor and/or management but instead were compensated through dividends, the IRS would impute part of those dividends as wages and require them to pay employment taxes. Many comments were received expressing concern with the required hour contributions of labor and management which must be made by a person. Some felt the 1000 hour option was too much and that it should be changed to 500 hours which is the amount IRS uses to determine material participation in a business enterprise. Others expressed that this hour requirement would be an extreme hardship on both producers and ASCS

employees administering the program because producers do not keep those kind of records. Commentators also expressed the view that since it is very difficult to determine management which is reasonable and necessary and no two farming operations were alike, a situation would develop where a determination of management which was reasonable and necessary on one farming operation would not be reasonable and necessary on another. Several commentators stated that the regulations should not try to be very specific but rather should leave those decisions to locally elected county ASC committees who are charged with administering the program. Several commentators felt that the regulations should provide more guidelines. The general concern of the commentators was that, in determining a "significant contribution" of personal management, time was not a good measure of such a contribution. They believed that the type of decisions an individual was making about a farming operation was far more important in determining whether a person had made a significant contribution of management than the number of hours the person took to make the decision. Other commentators stated that requiring 50 percent of an individual's commensurate share was unreasonable and would prevent new farmers from starting to farm. Another commentator stated the 50 percent requirement was very appropriate. Some commentators stated that the producers should be allowed to simply certify the quantity of their inputs and not require supporting documentation. Others felt that ongoing farming operations should be able to meet the labor and management requirements based on a county ASC committee's knowledge of past performance by that producer.

7 CFR 1497.6 provides that, for any person to receive payments under any of the applicable programs, a person must be actively engaged in farming by making a significant contribution of required inputs. The definition of a "substantial contribution" set forth in the proposed rule provided that the contribution of one half or more of a person's share of any one of these inputs was significant. Accordingly, the 50 percent factor is only applied against an amount equal to the value of the capital needed in the operation or the rental value of the land or equipment contributed. If a person contributed any combination of any two or three of these assets, then a 30 percent factor is applied against an amount equal to all of the costs of the farming operation, except for the value of the personal labor and management which is contributed. As used in the 1987 Act amendments, the term "contributed" implies that whatever an individual was contributing could not be paid for by the farming operation. Accordingly, this provision of the proposed rule is not changed.

The intent of the proposed rule was that an individual or entity would need to provide 50 percent or more of the individual's or entity's commensurate share of either labor or management, never to exceed 1000 hours, in order to qualify as actively engaged in farming. It was obvious in the comments that there was not a general understanding that the required contribution was the lesser of 1000 hours or 50 percent of the person's commensurate share and not both. 1000 hours is approximately one half of a normal work year. On very large farming operations which require large amounts of labor and management, it could be impossible to provide 50 percent of a person's commensurate share of the operation's labor or management if the operation is owned by a small number of persons. Because of this situation, the 1000 hour maximum limitation was proposed. The proposed rule also provided the county ASC committee the responsibility for determining the necessary quantity of management needed for a specific farming operation since it was recognized that the required hours would be different on each farming operation.

In order to ensure that farming operations are not adversely affected by the regulations, a determination has been made to change the proposed rule at § 1497.9 to provide that stockholders in a farming corporation may be compensated for the labor and management which they provide in order for the corporation to become actively engaged in farming. In order to provide greater flexibility to producers, the final rule also removes the requirement that a person must provide a specified amount of hours of management but retains the hour requirement for labor. However, the final rule also provides that in the case of active personal management, producers must provide information to show that they are providing management activities that are critical to the overall profitability of the farming operation. In the evaluation of a person's management activities, the potential impact of the decisions made on the profitability of the farming operation in which the person is involved will be taken into account. The proposed rule has also been changed to provide that a significant contribution of labor or management may include a combination of labor and management.

Substantial beneficial interest. Three comments were received concerning the definition of a "substantial beneficial interest." Several of the comments received on this definition expressed concern that the 10 percent threshold could serve as a loophole which could lead to program abuse by individuals participating in numerous corporations with less than a 10 percent interest in each such corporation.

It has been determined that adequate safeguards have been taken to ensure that programs are not abused because of the 10 percent ownership threshold. In addition, if it is determined that a person has attempted to avoid the provisions of Part 1497 by organizing a farming operation through a series of entities in which a person has less than a 10 percent ownership interest, an ownership interest of less than 10 percent shall be considered to be a significant beneficial interest. Accordingly, the proposed rule is adopted without change.

Total value of the farming operation. Nine comments were received regarding this definition. Several respondents to the proposed rule indicated that this definition was unclear. One comment expressed a request that this figure not include any harvesting or ginning expense. Other respondents expressed concern about using this figure to determine how much capital, land, or equipment a person must contribute because what is projected as the total cost of a farming operation at the beginning of a year many times does not turn out to be the actual cost at the end of the year. They felt that there should be an opportunity at the end of the year to make up any short fall that may exist in a situation like this.

The purpose of determining this value is to determine the required contribution of capital, land, or equipment which is necessary in order for a person to be considered to be actively engaged in farming. The purpose of this provision is not to disqualify persons from program participation. Since producers are able to closely estimate what their annual costs are going to be, this provision will not create an undue burden on producers. Accordingly, this section of the proposed rule has been adopted without change.

Section 1497.4 Timing for determining status of persons.

Eighteen comments were received regarding this section of the proposed rule. Several respondents felt that, if an

action was taken after April 1 that would increase the number of persons eligible to receive payments, such an action should be recognized since changes which decrease the number of eligible persons are recognized. Respondents also commented that there was a need for a provision to take into consideration situations when a person, for reasons beyond the individual's control, is prevented from fulfilling the farm's operating plan. One respondent expressed a desire that the date for making this determination never be earlier than April 1.

To allow producers to take an action after the date on which "person" determinations are made which would increase the number of persons would lead to program abuse. Accordingly, this portion of the proposed rule is adopted as the final rule. However, § 1497.2 is changed to provide relief for those individuals who cannot, for reasons beyond their control, fulfill in that year their farm operation plan.

Section 1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

Twenty-four comments were provided on this section of the proposed rule. Respondents to this section provided comments suggesting that this provision would discriminate against large efficient farms and would, therefore, cause a number of reorganizations. Other respondents stated that they thought the number of farming operations should not make a difference if the person did not exeeed the payment limitation when considering all of the operations. Some commentators felt the rule was totally unfair, others felt that the 15 day time limit on notifying the county ASCS office of the individual's permitted entities was too short. Still others expressed concern that this provision would cause producers to not participate in the programs subject to this part and thereby work against the purpose of the programs. Many respondents pointed out that the proposed rule did not provide that ASCS would notify an entity that such entity's payments may be reduced and then give the members of the entity a chance to adjust their interests in the entity.

The 1987 Act amendments specifically provide for a limitation on the number of entities through which an individual or entity can receive payments. The proposed rule inadvertently omitted the provision for notification and adjustment of an entity's or individual's share in program payments prior to a reduction in such payments. As a result, this section of the rule has been changed to provide for this provision. The proposed rule provided that producers had 15 days folloving the date a contract or agreement was submitted to notify the county ASC committee of their permitted entities. A determination has been made that this provision may be too restrictive depending upon the date upon which program provisions are announced. Accordingly, the final rule provides that the Deputy Administrator will announce the date when this notification is due.

Section 1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.

Forty-one comments were received regarding this section of the proposed rule. Some commentators felt that the requirement to document an individual's or entity's active involvement would require unnecessary paperwork and was an invasion of privacy. Some believed the rule was discriminatory against different groups including retired farmers, handicapped individuals, and absentee partners because it requires active personal labor. Other commentators suggested that one family member should be able to supply active personal labor or management and qualify numerous family members as being actively engaged in farming. Other commentators expressed their belief that farmers should not be required to supply active personal labor or management in order to be considered to be actively engaged in farming. Several commentators suggested that anyone who supplied any two of the five possible inputs should be determined to be actively engaged in farming. One commentator suggested that the supplying of water for irrigation purposes should meet the requirement of a contribution of equipment. Several commentators suggested that leased land and equipment which an individual or entity contributes to a farming operation should be eligible to meet the requirement for being actively engaged in farming.

The 1987 Act amendments require each individual or entity that is receiving payments to be actively engaged in farming and also require that, in order for an individual to be considered to be actively engaged in farming, the individual must provide active personal management or active personal labor. In order to meet these requirements, information must be collected from individual producers to determine that they are in compliance with these provisions. The mere provision of water is not considered to meet the requirement of providing equipment to a farming operation since it is not "equipment." However, if the individual or entity providing the water has the machinery necessary to deliver the water and a determination is made that the contribution of such equipment and the labor and management actually used to deliver such water is a significant amount, the individual or entity could be determined to be actively engaged in farming. It was the intent of the proposed rule that leased land and equipment could be used to meet that requirement of providing land or equipment to the farming operation. Accordingly, these suggested changes are not necessary. As discussed above, the proposed rule has been amended to provide for a contribution of a combination of active personal labor and active personal management as discussed at § 1497.3 under the definition of "significant contribution."

Section 1497.8 Joint operations.

Twelve comments were received concerning joint operations and how their members can be considered to be actively engaged in farming. One commentator felt that a joint operation should not be considered to be a person for payment limitation purposes. Another commentator suggested that the term joint operation should be defined at § 1497.3. Several comments were received that expressed concern with requiring each partner to provide personal labor or management in order for that partner to be considered actively engaged. Many of these comments suggested that if this requirement could not be deleted, relief should be provided to partnerships that were in existence prior to December 31, 1985. Many commentators stated that they believe the proposed rule requires that each partner make a contribution of capital, land, or equipment each year in order for that partner to be considered actively engaged. They also stated that this requirement, which the commentators believe is found at § 1497.8(c), is directly contrary to the provisions of the 1985 Act.

Since the 1987 Act amendments do not include a joint operation in the definition of a "person," neither did the proposed rule. The proposed rule defined joint operation at § 1497.8(a). The 1987 Act amendments specifically provide that, in order for members of joint operations to be considered actively engaged, they had to make "a significant contribution of active personal labor or active personal management." There is no statutory authority which would allow one member of a joint operation to provide

either active personal labor or active personal management on behalf of all other members of such operation. It is the intent of the 1987 Act amendments that each person be actively engaged in farming each year that a person receives a payment. This means that each year each person must make the required contributions of capital, land, or equipment and labor or management. However, in the case of a joint operation, the 1987 Act amendments provide that a joint operation may make a contribution of capital, land, or equipment on behalf of its members and this is provided for in the proposed rule. Accordingly, it has been determined that this section of the proposed rule will be adopted without change except that the definition of "joint operation" will be moved from this section to § 1497.3.

Section 1497.9 Limited partnership and corporations.

Forty comments were received on this section of the proposed rule. Many commentators said that the proposed rule was overly restrictive because the 1987 Act amendments only require that: "* * * members collectively make a significant contribution of personal labor or active personal management * * *." The commentators felt that a great number of family corporations would be adversely impacted by the requirement that those providing the labor or management had to own more than 50 percent of the corporation. Family farm corporations in which the majority stockholder has retired and is no longer providing labor or management is the example most often cited. One commentator suggested that the requirement should be "stockholders with at least 50 percent of the stock" rather than "more than 50 percent." Several commentators felt that stockholders in a corporation should each receive a payment in the same manner that partners in a general partnership do instead of making the corporation a person and limiting it to one payment. Other commentators felt that considering a stockholder that owns more than 50 percent of the corporation together as one with the corporation was not fair and equitable.

One of the major purposes of the amendments to the 1985 Act which were made by the 1987 Act was to reduce the proliferation of new "persons" for payment limitation purposes. To allow one individual with a minority interest in a corporation to provide all of the labor or management clearly violates the intent of the 1987 Act amendments and would encourage the creation of more corporations simply to receive government payments. As amended, the 1985 Act defines a person to include a corporation and not to include a partnership. With respect to corporations and shareholders, the proposed rule retains the same provisions which were used in prior years to consider a stockholder and a corporation as one "person" when the stockholder held a majority interest in the corporation. In order to reflect this continued treatment of corporations, a determination has been made to change the proposed rule to provide that stockholders holding at least 50 percent of the interest in the corporation or limited partnership must be providing active personal management or active personal labor rather than stockholders holding greater than 50 percent as the proposed rule provided. The proposed rule has also been changed to provide that limited partnerships, corporations, and other similar entities may compensate their members for the labor or management which such members contribute to meet the requirements for the entity to be actively engaged in farming.

Section 1497.10 Irrevocable trusts.

Several of the 21 comments received on this section of the proposed rule stated that both the trustee and the beneficiaries should be eligible to provide active personal labor or active personal management to enable the trust to be considered actively engaged in farming because in many cases the beneficiaries are minors or the trust provides that the trustee shall manage the business of the trust. One commentator expressed confusion at the use of the term "beneficiary" in the proposed rule because it was unclear whether we intended this to mean "income beneficiary" or "remainder beneficiary."

The 1987 Act amendments require that a person must be actively engaged in farming in order to receive certain payments. In an irrevocable trust, the beneficiaries are the ultimate recipients of the payments and, therefore, should be the individuals who must be actively engaged in farming. Accordingly, this portion of the proposed rule is retained. It was the intent of the proposed rule to provide that the term beneficiary apply to an income beneficiary and not a remainder beneficiary. Therefore, the proposed rule is changed to clarify that references to "beneficiaries" refers to "income beneficiaries."

Section 1497.11 Revocable trusts.

Seven respondents made comments on this section of the proposed rule. One respondent felt that a revocable trust and its grantors should be treated as a general partnership and its partners. This particular comment is discussed in detail under the comments on the definition of "person." Other respondent's comments were very similar to the ones received on irrevocable trusts with respect to allowing the trustee to provide labor and management to enable the trust to meet the actively engaged in farming requirement.

For the above discussed reasons, with just minor clarification changes, this section of the proposed rule is adopted without change.

Section 1497.12 Estates.

Sixteen comments were received on this section of the proposed rule. Comments were received which stated that if the deceased would have been actively engaged in farming that the estate should automatically be considered to be actively engaged. Other commentators felt that because a heir and the deceased would have been combined, there was no reason to combine such heir with the estate. Another comment stated that the combination should only last for one year. Still another commentator asked how long the combination or separation would last. One commentator felt that estates should be treated the same as irrevocable trusts. Another commentator felt the estate rules as proposed were reasonable and fair.

In developing the proposed rule, every attempt was made to be fair and equitable to the heirs of an estate. Accordingly, the proposed rule assumed that an estate would not be held open simply for the purposes of receiving a program payment because there are valid reasons, including tax consequences, which would ensure that the estate be closed timely. In determining that the estate should be combined with whomever the deceased would have been combined, it was determined that such an action would provide for the fair and equitable treatment of heirs, since the same amount of payments would be made as would have been made if the deceased individual had lived. A determination has been made to adopt the provisions of the proposed rule, except that three years after the individual dies, the estate will no longer be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for purposes of obtaining program payments. For clarification purposes, the proposed rule has been reorganized.

Section 1497.13 Landowners.

A total of 122 comments were received on this section of the proposed rule. Several commentators stated that the proposed rule, which excluded members of partnerships as landowners when the land was deeded to the partnership, was grossly unfair. This provision was explained in example 2 of the proposed rule. Other comments received expressed a lack of assurance as to how the landowner provision might apply in the case where the ownership interest is an undivided interest and also as to how the provision would apply for other entities, such as corporations, trusts, and estates. Still other comments stated that simply owning land should not entitle owners to payments and that payments should go only to operators and not to landowners. A few commentators stated that they were in favor of the proposed rule.

It was the intent of the proposed rule that any "person" who owned land would be subject to the landowner provision. This means that the provision will apply to corporations, irrevocable trusts, estates and all entities meeting the definition of a "person." Also, since in the case of ownership in undivided interest title to the land lies with those that have the undivided interest, those individuals would be eligible to use the provision. In the case of a joint operation (such as a general partnership) holding title to the land, the individual partners would not, under the proposed rule, be eligible to use the landowner provision. This portion of the proposed rule was based on the premise that a general partnership does not meet the definition of a "person." However, in order to provide for the fair and equitable treatment of joint operations, a determination has been made to change the proposed rule to provide that members of a joint operation that owns land may use the landowner provision if documentation is provided which indicates upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to the individual members.

Section 1497.14 Family members.

Sixteen comments were received concerning this section. Some comments indicated that the regulations should make it easier to bring family members into a farming operation and make them eligible for payments. Other commentators felt that farmers should not be allowed to let their offspring provide a minimum amount of labor and automatically qualify for payments. Some commentators felt there was a need to clarify that individuals or entities other than family members can have a part in a farming operation and still have family members use this provision to be considered to be actively engaged in farming so long as a majority of the members of the operation are members of the family. A number of comments were received which agreed with the change in the rules regarding family members.

The 1987 Act amendments specifically provide for a relaxation in the financing rules as the rules are applied to family farming operations and generally provide for overall relaxation of payment limitation provisions in order to provide greater flexibility to family farming operations desiring to bring additional family members into such farming operation. Accordingly, these provisions of the proposed rule are adopted without change. For clarity, the final rule provides the family member provision is applicable to a farming operation conducted by persons.

Section 1497.16 Cash rent tenants.

Many of the 39 comments received concerning this section stated that the requirement that equipment not be leased from the landowner was very unfair. Commentators felt this provision was overly restrictive and not required by the 1987 Act amendments. Several commentators suggested that, if the equipment is leased at a fair market value in an arms length transaction, the tenant should be able to lease the equipment from anyone, including the landowner. Another commentator felt that the prohibition on leasing the landowner's equipment should not apply to equipment that would normally go with the land, such as irrigation equipment. Other commentators felt providing labor and equipment through a custom farmer should be acceptable. Still other commentators felt that the landlord and tenant should only be combined on the farm where the tenant had not supplied the equipment and not on other farms where the two might be working together. Other commentators expressed a concern that a contribution of equipment should not be necessary if the tenant was providing capital and management.

Because of abuses in the past, the requirement that a cash rent tenant provide equipment along with capital and management is required by the 1987 Act amendments. Some of the abuses in the past included using the owner's equipment to farm the cash rented land and leasing the equipment at rates that were lower than the fair market value of such leasing. However, after receiving these comments, it has been determined that the proposed rule is overly restrictive. Accordingly, the final rule provides that the equipment may be leased from the landowner as long as it is leased at the fair market value.

For clarification purposes, the final rule also provides that, if equipment is leased from the same individual who is providing hired labor to the farming operation, the contracts must be two separate contracts with terms that reflect the fair market value of the leased equipment and hired labor. Such a tenant must also exercise complete control over the use of the leased equipment during the crop year.

Section 1497.17 Persons not considered to be actively engaged in farming.

Four comments were received on this section of the proposed rule. Respondents stated that a guaranteed crop share lease is the same as a cash lease. It was intended that such treatment be afforded guaranteed share leased. Accordingly, for clarity, this suggested change is adopted.

Section 1497.18 Changes in farming operations.

Twenty comments and suggestions on this section of the proposed rule were received. Many respondents stated that the rules as they are proposed would eliminate reorganizations which are done for good business reasons other than for meeting the requirements of this part. Other respondents felt that any reference requiring land which is brought into a farming operation to have crop acreage bases normal for the area should be eliminated. Still others stated that acceptable changes for meeting this provision should include those changes already contained in current ASCS operating procedure. A few respondents felt there is a need to clarify that only farm operations increasing the number of persons have to meet the requirements of this provision. Several respondents stated that the requirements for an increase in acreage to meet this provision should be the lesser of 20 percent or the acreage which is required to increase the program payments which will be earned by the additional person. Respondents also stated that if a person meets the substantive change requirement in one year, but for a different reason the person is not determined to be actively engaged in farming, such person should not have to meet the substantive change requirement again once they are determined to be actively engaged in farming. A few respondents felt that a change from share rent to cash rent should meet this requirement.

In the past, changes have been made by persons to meet the substantive change requirement which in essence were paper changes in which the same people farmed the same land with the same equipment. The proposed rule attempted to tighten some provisions where there have been abuses in the past, such as with the dissolution of an entity, the change in ownership of equipment or land, and a change from a share rent situation to a cash rent situation. It was the intention of the proposed rule that only farm operations that are increasing the number of persons who would be eligible to receive payments would have to meet this requirement. It was also intended that if a person meets this requirement in one year, but for a different reason the person is not considered to be actively engaged in farming, the farming operation subsequently would not have to meet the substantive change requirement again if such person is later determined to be actively engaged in farming.

In order to provide equitable treatment of farming operations which have expanded for legitimate reasons, a determination has been made to expand the number and type of changes which meet this requirement to include the change in ownership of land or equipment as long as the amounts of land or equipment which are changing ownership are commensurate with the shares of the new persons being recognized in the farming operation. Accordingly, § 1497.18 of the proposed rule is changed to reflect these changes.

Section 1497.19 Husband and wife.

Forty-three comments were received on this section of the proposed rule. Many commentators in general felt that a farm wife should be considered as a separate person if she maintained her farming operation separate from her husband's farming operation. Other commentators felt that the proposed rule did not go far enough in recognizing farm wives as persons. Some felt that wives should be separate persons in all cases. Some felt that they should never be considered to be separate persons.

The 1987 Act amendments specifically set forth the conditions where a husband and wife can be considered to be separate persons. These conditions are set forth in the proposed rule. Accordingly, this section of the proposed rule has been adopted without change.

Section 1497.22 Indian tribal ventures.

Three comments were received which stated that allowing the certification by the Bureau of Indian Affairs or the tribal council to apply only to owned land was overly restrictive and contrary to congressional policy.

The 1985 Act, as amended, provides that all persons, including Indians, are subject to these limitations. However, prior regulations have recognized that payments to tribal ventures can be expedited through the certification procedure. In order to prevent program abuse, the proposed rule provides this exemption only to tribal owned land. However, this section of the proposed rule has been modified to clarify that Indian tribal trust lands are covered under the certification provision.

Section 1497.23 States, political subdivisions, and agencies thereof.

Three comments were received which expressed discontent with the proposed rule. They stated that the social and economic impact on States was not considered.

The proposed rule reflects the intent of Congress to consider a State and all of its subdivisions to be one person. Accordingly, this portion of the proposed rule is not changed.

Section 1497.24 Scheme or device.

One of the two comments received on this section of the proposed rule suggested that individuals that were found guilty of a scheme or device should be banned from the program for three years. The other respondent expressed that the section was somewhat unclear in that § 1497.24 (a) and (b) seemed to be applying two different standards.

The purpose of § 1497.24(a) is to continue the prior policy of withholding payments in the current year in the event a scheme or device has been employed to avoid these regulations. This paragraph provides some examples of the type of actions which are considered to be a scheme or device. The language in § 1497.24(b) is taken directly from the 1987 Act amendments and provides the authority to determine that an individual shall be ineligible to receive payments for two years if the individual is found to have employed a scheme or device to avoid payment limitation provisions. Accordingly, this section of the proposed rule is adopted without change.

Section 1497.25 Joint and several liability.

Two comments were received on this section of the proposed rule. Both respondents stated that, if one member of a combined "person" could be readily identified as the party who failed to comply with these regulations, such party should be the party held liable for any refunds of excess payments. Also, in the case of a cash rent tenant who does not provide equipment or labor, this provision could be used to impose liability on an individual who was a landowner who had no interest in any payments at any time.

The purpose of this section is to provide authority to protect the interest of the government in the case of excess payments being made. Since all producers who farm with other producers have voluntarily elected to engage in the benfits which are derived from such an operation, it has been determined that such producers should be responsible for ensuring that all required program provisions are followed by all producers on the farm. Accordingly, this section of the proposed rule is adopted without change.

Section 1497.26 Equitable adjustments.

Eight comments were received on this section of the proposed rule. Respondents to this section of the proposed rule commented that the provision which states that "reorganizations that do not result in an increase in payments" ensures that there is no relief available under this provision. Other respondents felt that relief should be available when the current payment limitation rules are applied to farms that have been in existence for ten years or more.

The purpose of this section is to provide for a transition from the regulations at 7 CFR Part 795 to the rules at 7 CFR Part 1497. The section provides that if an individual or entity takes action in good faith on the action or advice of authorized employees of the Department, the Deputy Administrator may grant relief to the extent the Deputy Administrator deems necessary. It also provides that strict interpretation of the substantive change rules found at § 1497.18 may be waived with respect to a reorganization of a farming operation which, if not reorganized, would result in the decrease of the number of eligible persons under the new regulations so long as the reorganization does not increase the number of eligible persons above the number which would otherwise have been determined under 7 CFR Part 795 prior to the reorganization. Accordingly, this section of the proposed rule is adopted without change.

Section 1497.27 Appeals.

Most of the 16 comments received regarding this section of the proposed rule stated that it was unfair to penalize an appellant by completely eliminating

the time limits imposed by this section simply because the appellant requests more time or a postponement of the hearing. Most respondents felt that it would be more equitable to impose the time restraints when the hearing is actually held. Other comments stated that the 1987 Act amendments also provided that a time limit should be placed on the amount of time a county ASC committee has to make an initial person determination before the appeal process is even started.

Once a hearing has been scheduled for a person, any delay or postponement will adversely affect other producers, awaiting a hearing. Accordingly, this section of the proposed rule is adopted; however, the proposed rule has been changed at § 1497.2 to require that the county ASC committees shall make actively engaged in farming and person determinations within 60 days after the producer files the required documentation for these determinations.

Part 1498—Foreign Persons Ineligible for Program Benefits

The Department received 39 comments from several sources on Part 1498 of the proposed rule. Four of the comments were received from foreign governments and they were opposed to the proposed rule. All of these foreign governments expressed concern that they were being discriminated against with this rule and that it might be in violation of several international treaties. The proposed rule implements the clear Congressional intent expressed in the 1987 Act. Accordingly, except for editorial changes for the purpose of clarification, the proposed rule found at 7 CFR Part 1498 is adopted without change.

Part 704—Conservation Reserve Program and Part 795—Payment Limitation

Conforming amendments are also made to 7 CFR Parts 704 and 795 to make reference to new 7 CFR Parts 1497 and 1498.

Summary of Provisions of Final Rule

Section 1301 of the 1987 Act amended the 1985 Act by adding a new section 1001A to provide that: (1) An individual who receives specified farm program payments may not also hold directly or indirectly substantial beneficial interests in more than two entities, as defined in section 1001(5)(B)(i)(II) of the 1985 Act, which are engaged in farming operations that receive such payments; and (2) such an individual who does not receive such payments may not hold directly or indirectly substantial beneficial interests in more than three such entities as defined in section 1001(5)(B)(i)(II) of the 1985 Act. If an individual owns a substantial beneficial interest in excess of the permitted number of entities, the payment which is made to the "excess" entity is reduced by an amount that bears the same relation to the full payment that the individual's beneficial interest in the entity bears to all beneficial interests in the subject entity.

In order for an individual or entity to be made aware of these limitations, section 1001A(a)(2) of the 1985 Act provides that an entity receiving a specified payment must notify each individual or entity that holds a substantial beneficial interest in such entity of these provisions. In addition, each affected individual must notify the Secretary of Agriculture of those entities which are to be considered eligible to receive payments. Failure of the affected person to provide the required notification will result in the reduction of payments commensurate with the individual's or entity's share in the subject entity.

Accordingly, the final rule sets forth at 7 CFR 1491.3 the definitions of the terms "permitted entity," "person," and "substantial beneficial interest." A permitted entity would be an entity which is designated annually by an individual who is eligible to receive payments which are subject to the payment limitation provisions of the 1985 Act.

Generally, a person would be defined as an individual, corporation, joint stock company, association, limited partnership, irrevocable trust, charitable organization or similar entity including any individual or entity participating in a farming operation as: a partner in a general partnership; a participant in a joint venture; or a participant in a similar entity. A State, political subdivision and agencies thereof would also be considered to be one person.

A substantial beneficial interest would be defined as an interest which, either directly or indirectly, results in an ownership interest of 10 percent or more. A lesser amount would be applicable if it was determined that a financial arrangement had been established for the purpose of circumventing the provisions of 7 CFR Part 1497.

The notification procedure applicable to an entity receiving a payment and those individuals and entities who have a substantial beneficial interest in such an entity is set forth at 7 CFR 1497.5. In accordance with 7 CFR 1497.5, under the following example, the following notifications would be required.

AGRICULTURAL INCORPORATED

Stockholder	Ownership interest (percent)
A Incorporated	33⅓
B and F Partnership	33⅓
Individual C	33⅓
A Incorporated:	
Individual A	50
Individual D	25
Individual E	25
B and F Partnership:	
Individual B	50
Individual F	50

Agricultural, Inc., consisting of A, Inc., B and F Partnership, and Individual C, must inform the local Agricultural Stabilization and Conservation (ASC) Committee of the stockholders of Agricultural, Inc., and must inform each stockholder of the "permitted entity" provision.

A, Inc., consisting of Individual A, Individual D, and Individual E must inform each stockholder of the "permitted entity" provision. Each stockholder and partner must then inform the local ASC committee of their selected entities for payment.

B and F Partnership, consisting of Individual B and Individual F must inform each partner of the "permitted entity" provision and each partner must then inform the local ASC committee of their selected entities for payment.

If Individual E, a stockholder of A, Inc., does not choose A, Inc.'s interest in Agricultural Inc., as a "permitted entity," the payments made to Agricultural, Inc., would then be reduced by Individual E's ownership interest in A, Inc. For example, if Agricultural, Inc., is eligible to receive $50,000, the 33⅓ interest of A, Inc., in Agricultural, Inc., would be $16,665. Individual E's 25 percent interest in the $16,665 would be $4,166. Therefore, Agricultural, Inc., would be eligible to receive $45,834.

Section 1302 of the 1987 Act amended the 1985 Act by providing in section 1001A(b) of the 1985 Act that in order for a person to be eligible to receive specified payments such person must be actively engaged in farming. In order for an individual, including an individual who is a partner in a general partnership or a participant in a joint venture, to be considered to be actively engaged in farming the individual must make a significant contribution to the farming operation of: (1) Capital, equipment, or land, and (2) active personal labor or active personal management.

With respect to limited partnerships, corporations, and similar entities, the entity must make a significant

contribution of capital, equipment, or land to the farming operation and the stockholders or participants must collectively make a significant contribution of active personal labor or active personal management.

Special provisions are applicable to landowners, family members, and sharecroppers so long as their contributions are at risk and commensurate with the persons' share of the profits and losses from such operation. The special provisions for landowners do not include landlords who do not own the land which is part of the farming operation. Such landlords must contribute active personal labor and/or active personal management to be considered to be actively engaged in farming. Landowners who contribute owned land to a farming operation in return for a share rent of the crop produced on the farm or who retain control of the land and receive all of the income from the land are considered to be actively engaged in farming. Similarly, a sharecropper who makes a significant contribution of active personal labor to the farming operation and who receives a specified share of the crop produced on the farm in payment for such labor is considered to be activeiy engaged in farming.

Section 1001A(b)(3)(B) of the 1985 Act provides that with respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management or active personal labor shall be considered to be actively engaged in farming if such person's contribution to the farming operation is at risk and is commensurate with the person's share of the profits and losses from such operation.

Section 1001A(b)(4) of the 1985 Act provides that a landowner who is contributing land to the farming operation will not be considered to be actively engaged in farming if the landowner receives cash rent or a crop share guaranteed to be paid as rent. This section also provides that any other person who does not meet the actively engaged requirements for individuals, entities, landowners, family members, or sharecroppers shall not be considered to be actively engaged in farming.

Accordingly, 7 CFR 1497.3 sets forth the following definitions which will be used in determining whether a person is actively engaged in farming: "active personal labor;" "active personal management;" "capital;" "equipment;" "family member;" and "land." 7 CFR 1497.6–1497.15 sets forth the regulations which will be used to determine whether a person is actively engaged in farming.

Section 1001(5)(B)(iii) of the 1985 Act provides that, with respect to any married couple, the husband and wife shall be considered to be one person. However, any married couple consisting of spouses who prior to their marriage were separately engaged in unrelated farming operations shall be treated as separate persons with respect to such operations so long as the operations remain separate. Accordingly, 7 CFR 1479.19 sets forth the regulations with respect to farming operations conducted by a husband and wife.

The regulations currently set forth at 7 CFR Part 795 with respect to minor children, charitable organizations, and Indian tribal ventures are generally the same as the regulations set forth in 7 CFR Part 1497. However, 7 CFR 1497.22 provides payments to Indian tribal ventures may be made in excess of the applicab1e payment limitation, only with respect to land which is owned by the tribal venture or held in trust for the tribal council, when BIA or the tribal council certify that no individual Indian will receive more than the applicable limitation.

An estate is currently considered to be the same person as the sole heir of the estate. 7 CFR 1497.12 provides that an estate would be a separate person if the heirs or the personal representative of the estate make a significant contribution of active personal labor or active personal management and the estate makes a significant contribution of capital, equipment, or land. An estate will not be considered to be actively engaged in farming after three years unless the heirs or the personal representative provide evidence that the estate is still in effect for substantive reasons unrelated to the application of the payment limitation provisions. In addition, 7 CFR 1497.12 provides that if the deceased would have been combined with another person for purposes of 7 CFR Part 1497, such person and the estate will continue to be combined.

Section 1001(5)(E) of the 1985 Act requires that a change in a farming operation which results in an increase in the number of persons must be bona fide and substantive. Accordingly, 7 CFR 1497.18 sets forth provisions applicable to changes in farming operations. Section 1305(b) of the 1987 Act provides that the Secretary may waive these provisions in order to allow for the equitab1e reorganization of farming operations so long as the reorganization is completed prior to the final date by which producers must execute a contract to participate in the 1989 commodity programs and the reorganization will not result in an increase in the amount of program payments. Accordingly, 7 CFR 1497.26 provides that the Deputy Administrator may approve such reorganizations as bona fide and substantive to the extent that payments are not increased.

Section 1305(d) of the 1987 Act provides that this part shall apply to all Conservation Reserve Program contracts entered into on or after December 22, 1987. However, since the final rule which will set forth the regulations which implement this section did not become effective until after the execution of such contracts, the provisions of 7 CFR Part 795 will apply to such contracts unless the producer elects in writing to use the provisions of 7 CFR Part 1497 for contracts entered into on or after December 22, 1987 and before August 1, 1988. Accordingly, 7 CFR 1497.1 provides that this part will apply to contracts entered into with respect to the program specified in 7 CFR 1497.1(a)(3) on or after August 1, 1988.

Section 1001(7) of the 1985 Act provides that the Secretary shall establish time limits for the various steps involved in administrative appeals with respect to the application of the maximum payment limitation provisions. Accordingly, 7 CFR 1497.2(f) and 1497.27 set forth the time limits which apply to initial determinations and disputes rising under 7 CFR Part 1497.

In accordance with the final provisions of 7 CFR Part 1497, the following determinations would be made:

Landowner

Example 1. Landowner A rents land for one-fourth of the crop to Corporation B. Landowner A's share of the profits or losses from the farming operation are commensurate with the landowner's contribution to the operation and the contributions are at risk.

Determination. Landowner A is considered to be actively engaged in farming. The actively engaged determination for Corporation B will be determined separately.

Example 2. AB Partnership consists of Individual A and Individual B. AB Partnership owns land and rents the land to Individual E for one-third of the crop. The general partnership's share of the profits or losses from the farming operation are commensurate with the partnership's contribution to the operation and the contributions are at risk.

Determination. A general partnership is not considered to be a "person" for payment limitation purposes and, therefore, would not be considered to be actively engaged in farming with respect to the landowner provision. However, Individual A and Individual B may be considered actively engaged in farming under the landowner provision if the provisions of the partnership agreement provide that each would have an interest in the land when the partnership is dissolved. If any partner is specified in the partnership agreement as not receiving a share of the land when the partnership dissolves, such partner would be required to make a significant contribution of either active personal management and/or active personal labor in order to be considered actively engaged in farming.

Example 3. Individual A is the owner and operator of the farm. Individual A hires the management needed for the operation from a management company. Individual A hires a custom farmer for all labor that is needed for the farm. Individual A borrows capital from a source who has no interest in the farm or farming operation.

Determination. Individual A is considered to be actively engaged in farming due to the landowner provision.

Example 4. Corporation B owns a farm that is share rented to another producer. Corporation B does not contribute capital, equipment, active personal labor or active personal management to the farming operation.

Determination. Corporation B is considered to be actively engaged in farming due to the landowner provision.

Example 5. Individual C owns a farm that is leased on a share rent basis to Producer D. Individual C also rents land owned by Corporation A on a share rent basis. On the farming operation rented, Individual C contributes a significant amount of capital and hires all the labor and management.

Determination. Individual C is considered to be actively engaged in farming with respect to the land owned by Individual C. However, on the farming operation Individual C rents, Individual C would not be considered to be actively engaged in farming since such individual does not contribute a significant amount of either active personal labor or active personal management.

Example 6. Individual E, Trust F, Individual G, and Estate H own land each with a 25 percent undivided interest. All land owned in this farming operation is leased on a share rent basis. None of the landowners contribute capital, equipment, active personal labor, or active personal management to the farming operation.

Determination. Since each individual has an interest in the land, each will be considered to be actively engaged in farming due to the landowner provision.

Landlord

Example 1. Landowner A cash leases land to Individual B. Individual B subleases the land to Operator C. Individual B contributes land and does not contribute a signiiicant amount oi active personal labor or active personal management to the farming operation.

Determination. Individual B is not actively engaged in farming. Individual B cannot be considered to be actively engaged in farming due to the landowner provision, since Individual B is a landlord and not a landowner. Landowner A is not actively engaged on this farming operation since cash rent is received for the use of the land, but may be actively engaged with respect to another iarming operation. A separate determination will be made for Operator C.

Example 2. Individual D cash leases land from Landowner E. Individual D subleases the land to Producer C on a share rent basis. Individual D contributes the land and active personal management to the farming operation.

Determination. Since Individual D cash rents the land, Individual D cannot be considered to be a landowner and, therefore, cannot be considered actively engaged in farming due to the landowner provision but must contribute a significant amount of either active personal labor or active personal management. Since Individual D has provided a significant contribution of land and active personal management, Individual D will be considered to be actively engaged in farming. A separate determination will be made for Producer C. Landowner E is not considered to be actively engaged in farming with respect to this farming operation, but may be actively engaged with respect to another farming operation.

Individual

Example 1. Individual Z, a producer, rents 1,500 acres of land on a share rent basis. Individual Z owns the equipment and contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the producer's active personal management. In this situation, Individual Z's share of the profits or losses from the farming operation are commensurate with the contribution to the operation and the contributions are at risk.

Determination. Individual Z is considered to be actively engaged in farming.

Example 2. Individual A rents land on a share rent basis. Individual A contributes a significant amount of leased equipment and a significant amount of active personal management to the farming operation. Capital is borrowed from another producer on the farm at the prevailing interest rate. The labor needed for Individual A's part of the farming operation is hired. Individual A's share of the profits or losses from the farming operation are commensurate with Individual A's contribution to the operation and the contributions are at risk.

Determination. Individual A is considered to be actively engaged in farming since Individual A contributes a significant amount of both equipment and active personal management. A contribution of capital, equipment, or land used to meet the significant contribution provision must be provided from a fund or account separate from that of any individual or entity who has a direct or indirect interest in the farm. The fact that the capital, in this example, is borrowed from a person that has an interest in the farm has no bearing on the significant contribution requirement since capital was not a contribution to meet the significant contribution provision. However, if the equipment lease was financed by a producer with an interest in the farm, Individual A would not be considered to be actively engaged in farming since none of the contributions were provided from a fund or account separate from that of any individual or entity having a direct or indirect interest in the farm.

Example 3. Individual B share leases and participates in the Conservation Reserve Program on a farm that is owned by Landowner C. Individual B contributes a significant amount of both active personal labor and active personal management in the planting of pine trees which are used to control erosion. Individual B also contributes a significant amount of capital by paying the cost of the trees that is not covered by the cost share practice or Landowner C. Individual B also hires some labor to plant the pine trees.

Determination. Individual B is considered to be actively engaged in farming since such individual contributes capital, and active personal labor and active personal management. Landowner C is also considered to be actively engaged in farming on the basis that C is a landowner.

Example 4. Individual W provides water with respect to a rice crop

produced on Individual Z's farming operation. Individual W owns the equipment needed to pump and apply the water for the rice crop and determines when to apply the water. Individual W receives a share of the rice crop in payment for the application of water to the rice crop. In this situation, Individual W's share of the profits or losses from the farming operation are commensurate with the contribution to the operation and the contributions are at risk.

Determination. Individual W is considered actively engaged in farming since Individual W has provided a significant contribution of equipment and active personal management.

Sharecropper

Example 1. Individual Y provides labor for Landowner Z on 500 acres of rice in exchange for a share of the crop. Individual Y only contributes active personal labor to the farming operation. Landowner Z provides Individual Y with housing, equipment, and with credit for food, seed, chemicals, fertilizer, and fuel. Individual Y also receives a cash advance that will be set off from the proceeds of the crop after harvest.

Determination. Individual Y is considered to be actively engaged in farming since Individual Y is a sharecropper. Landowner Z is considered to be actively engaged in farming since Z is a landowner.

Joint Operation

Example 1. Partnership AB farms 2,000 acres of land. The partnership owns the equipment and the individual partners provide at least 50 percent of their commensurate share of active personal labor and a significant amount of active personal management. Each partner's share of the profits or losses from the farming operation are commensurate with the partner's contribution to the operation and their contributions are at risk.

Determination. Partner A and Partner B are considered to be actively engaged in farming.

Example 2. Partnership CD farms 2,000 acres of land. Each of the individual partners contribute a significant amount of both capital and active personal management to the farming operation. Labor is hired. Equipment and land are rented from third parties. Each partner's share of the profits or losses from the farming operation are commensurate with the partner's contribution to the operation and their contributions are at risk.

Determination. Partner C and Partner D are considered to be actively engaged in farming.

Example 3. Partnership X consists of 3 partners who are Corporation D, Individual A, and Partnership BC. Corporation D provides a significant amount of capital to the farming operation and a significant amount of active personal management. Corporation D finances Individual A's equipment contribution at the prevailing interest rate. Individual A also contributes the use of Individual A's owned land and a significant amount of active personal labor. Partnership BC contributes most of the equipment used in the farming operation and Partners B and C contribute a significant amount of both active personal labor and active personal management.

Determination. Assuming that each partner's share of Partnership X is commensurate, Corporation D, Individual A, and partnership members B and C are each considered to be actively engaged in farming. Despite the fact that individual A is financed by Corporation D for the equipment contribution, Individual A is considered to be actively engaged in farming because of the significant contribution of land and active personal labor to the farming operation.

Example 4. Partnership ABC consists of 3 partners. Each of the partners claim a one third share of the partnership, Partner A provides a significant amount of owned equipment and a significant amount of active personal labor. Partner B provides a significant amount of capital and a significant amount of active personal labor. Partner C provides a significant amount of equipment and a significant amount of active personal labor and active personal management. Partner B and Partner C's contribution to the partnership are commensurate with their claimed shares of the partnership. Partner B had informed the county ASC committee that Partner B was going to loan Partner A capital, at the prevailing interest rate, so that Partner A could make a capital contribution to the partnership in order to make Partner A's total contribution to the partnership commensurate with Partner A's claimed share of the partnership. During the end of year review the county ASC committee discovers that Partner B's loan to Partner A was a non interest bearing loan.

Determination. Partners B and C are determined to be actively engaged in farming because of their significant contributions of capital, equipment, labor and management and because their claimed shares of the partnership are commensurate with their contributions and are at risk. Partner A's contribution was not commensurate with Partner A's claimed share of the partnership and, therefore, Partner A is determined to not be actively engaged in farming even though Partner A made a significant contribution of equipment and active personal labor. The loan which Partner B made to Partner A was not at the prevailing interest rate and was, therefore, not a contribution by Partner A.

Limited Partnerships, Corporations, and Other Similar Entities

Example 1. Corporation XYZ rents 3,000 acres of land for one-fourth share of the crop. Corporation XYZ contributes a significant amount of capital to the operation. Stockholders, owning a total of 50 percent of Corporation XYZ, contribute a significant amount of active personal labor. The stockholder's share of the profits or losses from the farming operation are commensurate with their contributions to the operation and the contributions are at risk.

Determination. Corporation XYZ is considered to be actively engaged in farming and is one "person" for payment limitation purposes.

Example 2. Corporation AB consists of Father A and Son B, each having a 50 percent share. Father A is a retired farmer who created the corporation for tax reasons and to aid in the transfer of the farm to Son B. The corporation contributes a significant amount of capital and equipment to the farming operation. Son B contributes a significant amount of both active personal labor and active personal management to the farming operation; however, most of the labor is provided by hired laborers. Father A lives on the farm and contributes a token amount of active personal management.

Determination. Since Son B has at least a 50 percent share of the corporation, his significant contribution of active personal labor and active personal management would be enough to qualify the corporation as being actively engaged in farming. Since the corporation provides at least one of the required contributions of capital, equipment, or land and Son B, one of the corporation's stockholders, who has a 50 percent ownership interest, contributes active personal labor and active personal management, Corporation AB is considered to be actively engaged in farming and is considered to be one "person" for payment limitation purposes.

Example 3. Corporation GH consists of Husband G owning 25 percent of the stock of the corporation and Wife H owning 30 percent of the stock in the

corporation. Corporation GH provides all the capital, equipment, and land for the farming operation. Husband G and Wife H provide a significant amount of both active personal labor and active personal management.

Determination. Corporation GH is actively engaged in farming since Husband G and Wife H provide a significant amount of both active personal labor and active personal management. Since Husband G and Wife H collectively own more than 50 percent of the stock of the corporation, Husband G, Wife H, and Corporation GH are considered to be one person for payment limitation purposes.

Example 4. Father J conducts an individual farming operation on owned land. Corporation JKL conducts a farming operation on owned land. Father J also owns 50 percent of the stock of Corporation JKL and Trust KL (an irrevocable trust for the benefit of Father J's two minor children) owns 50 percent of the stock.

Determination. Father J and Corporation JKL are considered to be actively engaged in farming due to the landowner provision. However, Father J and Corporation JKL are considered to be one person for payment limitation purposes because Father J owns more than 50 percent of the stock of the corporation, including stock owned by an irrevocable trust for the benefit of such individual's minor children.

Example 5. Individuals M, N, and O own stock in two corporations and each has a separate and distinct farming operation on land that they individually own. Corporation MN has stockholders M and N, owning 60 and 40 percent of the stock, respectively. Corporation MO has stockholders M and O, owning 70 and 30 percent of the stock, respectively. Corporations MN and MO each have a separate and distinct farming operation on land owned by each individual corporation.

Determination. Individuals M, N, and O, and Corporations MN and MO are considered to be actively engaged in farming due to the landowner provision. Because Individual M owns more than 50 percent interest in both corporations, Individual M is considered to be one "person" with both corporations. Individuals N and O are considered to be separate persons on their individual farming operations and are considered to be actively engaged in farming due to the landowner provision.

Example 6. Corporation X has stockholders A, B, C, and D, owning 30 percent, 20 percent, 15 percent, and 35 percent, respectively. Corporation Y has stockholders A, B, C, and E, owning 10 percent, 20 percent, 25 percent, and 45 percent, respectively. Each corporation farms land owned by the corporation.

Determination. Corporations X and Y are both considered to be actively engaged in farming due to the landowner provision. However, Corporation X and Corporation Y are considered to be one person for payment limitation purposes since the same two or more stockholders own more than 50 percent of the stock in each of two corporations having farming interests.

Irrevocable Trusts

Example 1. EF Trust, with Individual E and Individual F, each having an interest of 50 percent, contributes a significant amount of capital to the farming operation. Each beneficiary contributes a significant amount of active personal management. All labor is hired. The land and equipment are leased. The beneficiaries' share of the profits or losses from the farming operation are commensurate with the beneficiaries' contribution to the operation and the contributions are at risk. Individual E also has another farming interest as an individual.

Determination. EF Trust is considered to be actively engaged in farming since the trust provides capital, and the beneficiaries contribute a significant amount of active personal management. The trust is considered to be one "person" for payment limitation purposes. Individual E may also be considered to be a separate person with respect to Individual E's individual farming operation.

Example 2. Individual G is a 100 percent income beneficiary of G Trust. G Trust contributes a significant amount of both equipment and capital to the farming operation. Individual G contributes at least 50 percent of the operation's active personal labor. G Trust leases all land and hires all management and 50 percent of the labor. Individual G also has farming interests as an individual.

Determination. G Trust is considered to be actively engaged in farming. Individual G and G Trust are considered to be one "person" for payment limitation purposes because Individual G is the sole income beneficiary of the trust.

Example 3. Testamentary Trust Z has beneficiaries A, B, and C, and is the owner and operator of a farming operation. Trust Y has beneficiaries A, B, and C. The corpus of the Trust Y consists of stocks, bonds, notes receivable, urban real estate, and cropland that is share leased to a separate individual.

Determination. Testamentary Trust Z and Trust Y are considered to be actively engaged in farming due to the landowner provision. However, Testamentary Trust Z and Trust Y are considered to be one person for payment limitation purposes because the same two or more beneficiaries have more than a 50 percent interest in two or more irrevocable trusts.

Example 4. A widow owns and operates farm property. Under the will of her late husband, certain specific bequests of cash and non-farm property were made to persons other than the widow. The balance of the estate, including farmland, is distributed to a testamentary trust. The widow has the sole right to the income of the trust during her lifetime. At the time of her death, the trust is to be terminated and the property distributed to her heirs.

Determination. Since the widow has the sole right to income of the trust during her lifetime, she is considered the sole beneficiary and therefore one person with the trust for payment limitation purposes. The trust would be considered to be actively engaged in farming due to the landowner provision.

Revocable Trusts

Example 1. ST Trust is a revocable trust with Individual S and Individual T as beneficiaries, each having an interest of 50 percent. Individual U is the grantor. ST Trust contributes a significant amount of both capital and equipment to the farming operation. The beneficiaries each contribute a significant amount of active personal management to the operation. All land is leased and all labor is hired. The beneficiaries share of the profits or losses from the farming operation are commensurate with their contribution to the operation and the contributions are at risk.

Determination. ST Trust is considered to be actively engaged in farming. ST Trust and Individual U are considered to be one "person" for payment limitation purposes because Individual U is the grantor of a revocable trust.

Example 2. BP Trust is a revocable trust with Individual B and Minor P as beneficiaries. Grandfather G is the grantor. Individual B contributes a significant amount of active personal management to the farming operation. The trust provides all the capital and land. The trust also hires a person to provide the labor required for the farming operation. Minor P does not provide any contribution to the farming operation.

Determination. BP Trust is considered to be actively engaged in farming. One

beneficiary provides the required contribution of active personal management and the trust provides the required contribution of capital and land. BP Trust and Grandfather G are considered to be one "person" for payment limitation purposes because Grandfather G is the grantor of the revocable trust.

Estates

Example 1. E Estate is formed upon the death of Individual E in February of 1989. Individual B is the sole heir of the estate and provides a significant amount of active personal management. E Estate provides equipment and rented land. All labor is hired. Individual B also has individual farming interests. All contributions are commensurate and are at risk.

Determination. E Estate is considered to be actively engaged in farming since the heir (Individual B) has provided a significant amount of active personal management and the estate has provided equipment and land. Although Individual B is the sole heir of the estate, Individual B and the estate are not considered to be one "person" because, prior to the death, Individual E and Individual B would not have been combined as one "person". Therefore, if Individual B is determined to be actively engaged in farming with respect to the separate farming operation, Individual B may be considered to be a separate "person" from E Estate.

Example 2. C Estate was formed in October 1988 upon the death of Individual C. The heirs are Individual E, F, and G, each having a one-third interest. Prior to the death of Individual C, Individual C owned equipment and all of the acreage farmed was cash leased. Individual E will serve as executor for the estate. For 1989, C Estate will cash lease land. C Estate will contribute a significant amount of cash rented land, owned equipment, and capital for the farming operation. Individual E will provide a significant amount of active personal management with the estate hiring all labor. All contributions are commensurate and are at risk.

Determination. C Estate is considered to be actively engaged in farming. The heirs may also be considered to be separate persons with respect to other farming operations if all conditions are met for such operation.

Example 3. Y Estate is formed in August 1989 upon the death of Individual Y. Prior to death, Individual Y had been determined to be actively engaged in farming and had entered into a contract to participate in the 1989 Acreage Reduction Program. Y Estate will continue to farm the acreage that was leased to Individual Y, as a successor-in-interest. Y Estate will hire any labor and management that is needed for the farming operation.

Determination. Y Estate is considered to be actively engaged in farming because Individual Y was determined to be actively engaged in farming and had executed a contract to participate in the program prior to death. However, to continue to be actively engaged in farming for the following year, the heirs or personal representative of the estate will have to provide a significant amount of active personal labor or active personal management and the estate will have to provide a significant amount of capital, equipment, or land.

Cash Rent Tenants

Example 1. Individual B rents 800 acres of cropland from Landowner C. Individual B contributes 80 percent of all the active personal labor and capital to the farming operation. 20 percent of the labor is hired and 100 percent of the management is hired. Individual B's share of the profits or losses from the farming operation are commensurate with Individual B's contributions to the operation and the contributions are at risk.

Determination. Individual B is considered to be actively engaged in farming and will be considered a separate "person" from the landowner.

Example 2. Individual C rents 800 acres of cropland from Landowner D. Individual C contributes 100 percent of the active personal management and capital needed for the operation. 100 percent of the labor is hired. The equipment is leased from the landowner at a fair market value. Individual C's share of the profits or losses from the farming operation are commensurate with Individual C's contributions to the operation and the contributions are at risk.

Determination. Individual C is considered to be actively engaged in farming. Individual C is contributing a significant amount of both active personal management and is contributing equipment. In this situation, Individual C and Landowner D would not be considered to be one person. A cash rent tenant may contribute active personal labor and capital, equipment, or land and be considered to be actively engaged in farming and considered a separate person from the landowner. If a cash rent tenant contributes active personal management and does not make a significant contribution of active personal labor, such tenant must also make a significant contribution of equipment to the farming operation. The equipment may be owned by Individual C or it may be leased or rented from another source, including the landowner if leased at a fair market value.

Example 3. Individual E is a cash rent tenant. Individual E contributes a significant amount of capital, land, and active personal management to the farming operation. Individual E hires a custom farmer, who has his own equipment, to provide the labor needed on the farm. The custom farmer is compensated by receiving a share of the crop.

Determination. Individual E is considered to be actively engaged in farming, but will be combined with the landowner because Individual E is not providing equipment or active personal labor. The custom farmer is no longer considered to be a custom farmer since a share of the crop is received as payment, but Individual E and the custom farmer are considered to be a joint operation since there is a sharing of the crop. The custom farmer shall be considered to be actively engaged in farming and a separate "person" from Individual E.

Example 4. Individual D is a cash rent tenant and contributes a significant amount of both equipment and active personal management to the farming operation. The equipment is leased from a custom farmer who is hired to provide the labor necessary for the farming operation. However, the equipment leased is also used by the custom farmer on other farming operations.

Determination. Individual D is considered to be actively engaged in farming; however, Individual D is considered to be one person with the landlord. If the equipment is leased from the same person providing the labor, the equipment must be under the control of Individual D during the current crop year. If the custom farmer used another line of equipment for the other farming operations, Individual D would be considered to be actively engaged in farming. The custom farmer is not considered to be actively engaged with respect to this farming operation, but may be determined to be actively engaged with respect to another farming operation. This determination would be the same if the person providing the equipment was not a custom farmer.

Family Member

Example 1. Father A has been farming owned land and rented land for approximately 15 years. Son B, an adult, is starting to farm with his father. Son B contributes a significant amount of active personal labor. Father A contributes all of the farming operation's

capital, equipment, and active personal management.

Determination. Father A and Son B are both considered to be actively engaged in farming and would be considered to be two persons.

Example 2. In 1988, Partnership CD consisted of Individual C and Grandfather D. For 1989, however, Grandson E is brought into the farming operation. Individual C contributes all the capital and a significant amount of active personal management. Grandfather D contributes the use of a significant amount of equipment, owned land, and active personal management. Grandson E will provide all the active personal labor.

Determination. Individual C, Grandfather D, and Grandson E will each be considered to be actively engaged in farming. The county ASC committee will determine whether the claimed shares are commensurate with each partner's contribution to the farming operation.

Example 3. Father Y has a large farming operation, part of which is owned and part of which he share leases. In 1989, Son Z subleases three farms from Father Y and farms them as a separate farming operation. Father Y provides Son Z with all the needed capital and equipment. Son Z contributes a significant amount of both active personal labor and active personal management to the farming operation.

Determination. Son Z is not considered to be actively engaged in farming. Son Z does not qualify with respect to the family member provision since he was not brought into a family farming operation. If Father Y had formed a joint operation with his son, then Son Z would have been considered to be actively engaged in farming with respect to the family member provision. A separate actively engaged determination would need to be made for Father Y.

Example 4. ABC Partnership is a family held partnership consisting of Father A, Son B, and Daughter C. In 1989, Father A brings Son-in-law D into the farming operation. Daughter C, who is married to Son-in-law D, does not provide a significant amount of active personal labor or active personal management to the farming operation. Son B contributes a significant amount of capital, active personal labor, and active personal management. Father A originally contributed his owned equipment to the partnership and contributes some capital and a significant amount of active personal management. Son-in-law D contributes a significant amount of both active personal labor and active personal management to the farming operation.

Determination. Father A, Son B, and Son-in-law D are each considered to be actively engaged in farming. Daughter C is not considered to be actively engaged in farming. Son-in law D was brought into the farming operation using the family member provision. If Daughter C made a significant contribution of active personal labor or active personal management, then Son-in law D would not have been considered to be actively engaged in farming with respect to the family member provision.

Example 5. Mother A, Daughter B, and Son C are partners in a family partnership. Son D, a minor, becomes a partner in 1989. Mother A contributes a significant amount of both capital and active personal management. Daughter B contributes a significant amount of both capital and active personal management. Son C contributes a significant amount of equipment, active personal labor, and active personal management. Son D contributes a significant amount of active personal labor.

Determination. Mother A, Daughter B, and Son C are considered to be actively engaged in farming. However, Son D is not considered to be actively engaged in farming due to the family member provision since he is not an adult family member.

Husband and Wife

Example 1. Husband A and Wife B both were involved in separate unrelated farming operations prior to their marriage. Husband A rents 1,000 acres of cropland for one-fourth of the crop. Wife B owns land that was given to her by her father before her marriage to Husband A. Both operations have been kept separate and distinct during the marriage. Both persons have been determined to be actively engaged in farming.

Determination. Husband A and Wife B would be considered to be separate persons for payment limitation purposes as both farming operations have remained separate and distinct.

Example 2. Husband G owns 500 acres of land that he rents to Producer Z for one-third of the crop. Wife D also owns 500 acres of land which was given to her before her marriage by her grandfather and is rented to Producer Z for one-third of the crop. The financing and accounting for each person has been kept totally separate and distinct.

Determination. Husband G and Wife D are each considered to be actively engaged in farming due to the landowner provision. Each will be considered to be a separate "person" since all aspects of the farming operations were kept separate and distinct.

Example 3. Husband C owns 500 acres of land that is rented to Producer Y for one-fourth of the crop. Wife E owns 600 acres of land which was bought by her before her marriage and is rented to Producer Y for one-fourth of the crop. Both farms were reconstituted as one farm when both rented their land to Producer Y because they were being farmed as a single farming unit. Accounting and farming operations were not kept separate after the reconstitution.

Determination. Husband C and Wife E are each considered to be actively engaged in farming with respect to the landowner provision; however, because the farming operations were not kept separate and distinct, they would be considered to be one "person" for payment limitation purposes.

Minor Children

Example 1. Minor A has a farming operation in which Parents B and C have no interest. Minor A maintains housing separate from Parents B and C. Minor A contributes a significant amount of equipment leased from an unrelated party, active personal labor, and active personal management to the farming operation.

Determination. Minor A would be considered to be actively engaged in farming. Minor A and Parents B and C would be considered to be separate persons since Minor A maintains a separate household.

Example 2. Minor D has a farming operation in which neither parent has an interest. However, Minor D does not have a separate household. Minor D's parents are divorced and Minor D's mother has custody of Minor D. Minor D contributes a significant amount of leased equipment, active personal labor, and active personal management to the farming operation.

Determination. Minor D is determined to be actively engaged in farming but will be combined with Minor D's mother because all of the provisions concerning a minor have not been met. Minor D is not combined with the father because the mother has custody of Minor D.

Indian Tribal Ventures

Example 1. Indian tribal venture AB farms owned land. The Bureau of Indian Affairs (BIA) has certified that payments exceeding the applicable payment limitation with respect to such land will not accrue directly or indirectly to any individual Indian, including the spouse or minor children of such Indian.

Individual Indians also farm land owned by third parties.

Determination. The BIA certification is effective only for land owned by the Indian tribal venture. Each individual Indian farming land owned by third parties must certify that individually they will not receive payments exceeding the applicable payment limitation with respect to both the earnings from the tribal venture's farming operation and their individual farming operation.

Example 2. Indian tribal venture CD farms both owned land and land that is leased to the tribal venture. The tribal venture provides all the capital and equipment, but only a few members of the tribal venture contribute a significant amount of active personal labor or active personal management to the farming operation on the leased land. BIA certifies that no one Indian accrues directly or indirectly more than the applicable limitation for land that is owned by the tribal venture. Some members of the tribal venture lease land and farm as individuals, contributing significant amounts of leased equipment, active personal labor, or active personal management.

Determination. The tribal venture is considered to be actively engaged in farming with respect to land that is owned and may earn payments in excess of the applicable payment limitation since no individual Indian receives payments in excess of the applicable payment limitation. The land that is leased by the tribal venture must qualify under the same provisions that apply to joint operations. Therefore, for land leased to the tribal venture, each member of the joint venture must contribute a significant amount of active personal labor or active personal management to the farming operation to be considered actively engaged in farming. Each individual Indian must certify that individually they will not receive payments exceeding the applicable payment limitation with respect to both the earnings from the tribal venture's farming operation and their individual farming operation. BIA's certification is only applicable for the land that is owned by the Indian tribal venture. The tribal venture must complete the necessary forms for the county ASC committee to determine if the members of the tribal venture are actively engaged with respect to the leased land. The individual Indian must also complete the necessary forms for the county ASC committee to determine if such individual is actively engaged in farming.

States, Political Subdivisions, or Agencies Thereof

Example. The State of X, City Y of State X, and Agency Z of the State of X each own cropland. The land is leased to individual farming operations for a share of the crop.

Determination. The State of X, City Y, and Agency Z are considered to be one "person" and are actively engaged in farming due to the landowner provision.

Bona Fide and Substantive Changes

Example 1. Corporation A owned equally by Stockholders B, C, D, and E, owns and operates a farm. Individuals C, D, and E form General Partnership X that leases land from Corporation A for a share of the crop. General Partnership X also leases land from Individual S, on which Corporation A has never farmed, for a share of the crop. The land leased from Individual S reflects approximately a 20 percent increase in cropland from the land being farmed by Corporation A. The crop acreage bases on the increased land is normal for the area. Partnership X provides a significant amount of both equipment and capital. Partners C, D, and E provide a significant amount of active personal labor and active personal management.

Determination. A bona fide and substantive change has occurred, as the size of the farming operation has been increased by at least 20 percent with crop acreage bases normal for the area by leasing additional cropland from Individual S. Corporation A is considered actively engaged in farming due to the landowner provision and is considered a separate person. Members C, D, and E are each considered to be actively engaged in farming, since each member provides a significant amount of active personal labor and active personal management and Partnership X provided a significant amount of equipment and land. Individual S is considered to be actively engaged in farming due to the landowner provision. Corporation A, Members C, D, and E, and Individual S are each considered to be separate "persons" for payment limitation purposes.

Example 2. Father A has previously conducted an individual farming operation consisting of owned land. For the current year, Father A proposes to expand the operation by forming a joint venture with his adult daughters B and C, with each member having equal shares. No additional acreage is farmed, but Father A has gifted to each daughter one-third of the owned land.

Determination. A bona fide and substantive change has occurred since a gift of land commensurate with the individuals' share of the farming operation has been received. Father A and Daughters B and C are considered to be actively engaged in farming due to the landowner provision.

Example 3. Brother D has conducted a individual farming operation consisting of owned land. For the current year, Brother D proposes to expand the operation by forming a partnership with Sister E. Brother D will receive 75 percent of the partnership earnings and Sister E will receive 25 percent of the partnership earnings. Brother D sold the equipment that will be used to plant and harvest the crop to Sister E who receives financing from a commercial lending institution. Brother D provides a significant amount of both active personal labor and active personal management. Sister E provides a significant amount of active personal management.

Determination. A bona fide and substantive change has occurred since a sale of equipment commensurate with the individuals' share of the farming operation has taken place. Brother D is considered to be actively engaged in farming due to both the landowner and individual provisions. Sister E is considered to be actively engaged in farming since she provides a significant amount of both equipment and active personal management.

Section 1001C of the 1985 Act provides with respect to the 1989 and 1990 crops that any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence shall be ineligible to receive any type of production adjustment payment, price support program loan, payment, or benefit made available under the 1949 Act, the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), or Subtitle D of Title XII of the 1985 Act with respect to any commodity produced, or any land set aside from production, on a farm that is owned or operated by such person. However, such an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such a farm would not be ineligible to receive such payments, loans, and benefits.

Section 1001C of the 1985 Act also provides that a corporation or other entity shall be ineligible to receive such payments, loans, or other benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted to the United States for permanent residence unless such

persons provide a substantial amount of active personal labor in the production of crops produced on the farm. The Secretary is also authorized to make payments, loans, and other benefits to such an ineligible entity in an amount which the Secretary determines to be representative of the percentage interests in the entity that is owned by citizens of the United States and aliens lawfully admitted to the United States for permanent residence.

Accordingly, this final rule would set forth at 7 CFR Part 1498 the regulations which implement section 1001C of the 1985 Act with respect to the 1989 and 1990 crops. For purposes of 7 CFR Part 1498, the terms "person," "entity," "capital," "land," and "active personal labor" are defined in 7 CFR 1498.3 in virtually the same manner as in 7 CFR 1497.3. Those payments, loans, and benefits which are subject to the provisions of 7 CFR Part 1498 are defined in 7 CFR 1498.3 as any cash or in-kind payment, loan disbursement or other benefit made in accordance with the 1949 Act, the Charter Act, and subtitle D of title XII of the 1985 Act which results in an expenditure by the Commodity Credit Corporation or any other Federal agency.

The regulations at 7 CFR 1497.25, 1497.27 and 1497.28 set forth provisions which are applicable to: determinations of a scheme or device which are designed to evade 7 CFR Part 1497; the granting of equitable relief by the Deputy Administrator; and the right to seek an administrative appeal in accordance with 7 CFR Part 780. Similar provisions are set forth at 7 CFR 1498.6, 1498.7, and 1498.8.

In determining whether more than 10 percent of the beneficial ownership of an entity is held by persons who are not citizens of the United States or by aliens lawfully admitted into the United States for permanent residence, 7 CFR 1498.4 provides that such a determination is made based upon such ownership interest which is the higher of such amount on the date the applicable program contract or agreement is executed or as determined by the Deputy Administrator, the final harvest date which is normal in the area for the applicable program crop. Accordingly, any increase in the foreign ownership of an entity after the date of execution of such a contract or agreement will affect the eligibility of an entity to receive a payment, loan, and benefit. Any payment, loan, and benefit which had been made prior to the date on which the beneficial ownership requirement was exceeded would be required to be refunded by the entity.

In accordance with 7 CFR 1498.4, payments, loans, and benefits may be received by: (1) A citizen of the United States; (2) an alien legally admitted to the United States for permanent residence; and (3) an entity which is not subject to 7 CFR Part 1498 who, through such means as a lease, is in lawful possession of a farm owned by an entity or individual who is ineligible to receive payments, loans, and benefits. Similarly, such individual or entity who is a successor-in-interest to a program contract or agreement executed by a foreign individual or entity with respect to such a farm may be eligible to receive payments, loans, and benefits.

In accordance with 7 CFR 1498.5, an entity subject to the provisions of 7 CFR Part 1498 is required to provide to the county ASC committee or other party who is executing the program contract or agreement, the names and social security or tax identification numbers of all foreign individuals and foreign entities who have a beneficial ownership interest in an entity. Failure to provide such information will result in the ineligibility of the entity to receive any payment, loan, and benefit.

Foreign Individual

Example. Individual A is a foreign person who does not have an Alien Registration Receipt card. Individual A lives in another country and makes yearly visits to the farm as well as making monthly phone calls to the foreman of the farming operation. Individual A hires all the labor required for the farming operation. Individual A contributes most of the management and all of the capital required for the farming operation.

Determination. Individual A is not eligible to receive any type of a production adjustment payment or a price support program loan with respect to this farming operation. Individual A must contribute a substantial amount of active personal labor to be considered to be eligible for program payments as specified in 7 CFR 1498.3 since Individual A is not a U.S. citizen or an alien lawfully admitted into the U.S. Individual A must also meet the requirements of 7 CFR Part 1497 to be eligible to receive a payment.

Corporations in Which a Foreign Individual Has an Interest

Example. Corporation ABC consists of Individual A having a 25 percent share, Partnership B having a 25 percent share, and Foreign Individual C having a 50 percent share. Individual A and the members of Partnership B contribute a significant amount of active personal labor, active personal management, and equipment. Foreign Individual C contributes capital and owned land to the farming operation. The county ASC committee has determined that the corporation is actively engaged in farming.

Determination. Even though the county ASC committee has determined the corporation to be actively engaged in farming, the corporation may not receive a full payment since Foreign Individual C does not contribute a substantial amount of active personal labor. The stockholders who are U.S. citizens or aliens who are lawfully admitted into the U.S. may request a payment which represents their share of the corporation's payment.

List of Subjects

7 CFR Part 1497

Price support programs.

7 CFR Part 1498

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Accordingly, this final rule amends Title 7 of the Code of Federal Regulations as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: Secs. 1201, 1231–1244; Pub. L. 99–198, 99 Stat. 1354, as amended (16 U.S.C. 3801, 3831–3844).

§ 704.16 [Amended]

2. Section 704.16(c) is amended by removing the phrase "Part 795" and inserting in lieu thereof "Parts 795, 1497, and 1498".

PART 795—[AMENDED]

3. The authority citation for Part 795 continues to read as follows:

Authority: Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308; Pub. L. 99–500 and Pub. L. 99–591.

§ 795.2 [Amended]

4. Section 795.2 is amended by adding a new paragraph (e) to read as follows:

* * * * *

(e) Except as provided in Part 1497 of this title, this part shall not be applicable to contracts entered into on or after August 1, 1988 in accordance with Part 704 of this chapter.

5. A new Part 1497 is added to read as follows:

PART 1497—PAYMENT LIMITATION

Sec.

1497.1 Applicability.
1497.2 Administration.
1497.3 Definitions.
1497.4 Timing for determining status of persons.
1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.
1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.
1497.7 Individuals.
1497.8 Joint operations.
1497.9 Limited partnerships, corporations and other similar entities.
1497.10 Irrevocable trusts.
1497.11 Revocable trusts.
1497.12 Estates.
1497.13 Landowners.
1497.14 Family members.
1497.15 Sharecroppers.
1497.16 Cash rent tenants.
1497.17 Persons not considered to be actively engaged in farming.
1497.18 Changes in farming operations.
1497.19 Husband and wife.
1497.20 Minor children.
1497.21 Charitable organizations.
1497.22 Indian tribal ventures.
1497.23 States, political subdivisions, and agencies thereof.
1497.24 Scheme or device.
1497.25 Joint and several liability.
1497.26 Equitable adjustments.
1497.27 Appeals.
1497.28 Paperwork Reduction Act assigned number.

Authority: Sections 1001 through 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended (7 U.S.C. 1308, et seq.).

§ 1497.1 Applicability.

(a) This part is applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan at a level lower than the original loan level;

(3) The Conservation Reserve Program;

(b) This part shall be applied to the programs specified in paragraph (a) (1) and (2) on a crop year basis and with respect to the program in paragraph (a)(3) on a fiscal year basis.

(c) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program contracts entered into on or after December 22, 1987 and before August 1, 1988, the person may elect to have the provisions of this part apply to such a contract by notifying the county committee in writing of such election.

(d) The regulations set forth at Part 795 of this title shall be applicable to Conservation Reserve Program contracts entered into prior to December 22, 1987, and to Conservation Reserve Program contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (c) of this section.

(e) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in paragraph (a) of this section.

(f) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(g) Payments made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

§ 1497.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The county committee shall make the initial "actively engaged in farming" and "person" determinations within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to the county committee for such year.

(f) The county committee shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year. If the individual dies or is incapacitated before a determination is made that the individual is "actively engaged in farming," the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the county committee information that verifies that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be "actively engaged in farming," the county committee shall allow such determination to be in effect for that program year. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

(g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1497.3 Definitions.

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active Personal Labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming

operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Active Personal Management. Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Providing services (whether performed on-site or off-site) reasonably related and necessary to the farming operation including any of the following:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops or conserving use acreage and activities required in livestock operations.

(ii) Business-related actions which include discretionary decision-making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; or

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity. With respect to a farming operation which consists of more than one individual or entity:

(1) Such capital which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries or related entities.

(2) Such capital which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conservation cover crops or conservation use acreages and those needed to conduct livestock operations. With respect to a farming operation which consists of more than one individual or entity:

(1) Such equipment which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such equipment which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, the equipment must be leased at a fair market value.

Family Member. The term "family member" means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products which is operated by an individual or entity which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program. With respect to a farming operation which consists of more than one individual or entity:

(1) Such land which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries, or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such land which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, the land must be leased at a fair market value.

Payment. A payment includes:

(1) With respect to the programs specified in § 1497.1 paragraph (a) (1) and (2):

(i) Any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(ii) Any disaster payment made under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

(iii) Any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), 101A(a)(5), or 201(b)(2), respectively, of the Agricultural Act of 1949, or any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level established than the original loan level under the Agricultural Act of 1949;

(iv) Any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, or the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of the Agricultural Act of 1949;

(v) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(g), respectively, of the Agricultural Act of 1949;

(vi) Any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949; and

(vii) With respect to the Conservation Reserve Program, annual rental payments.

Permitted Entity. A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1.

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

Public School. A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which receives a predominant amount of its financing from public funds.

Related entity. A related entity is an entity in which a member of a farming operation, which consists of two or more entities, has an interest, either directly or indirectly.

Significant Contribution. A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution which has a value which is equal to at least 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value which is equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities which are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

Substantial Beneficial Interest. A substantial beneficial interest in any entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total Value of the Farming Operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management which is contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1497.4 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last program crop in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

§ 1497.5 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual shall receive a payment under a program specified in § 1497.1 either directly or indirectly from no more than three permitted entities. An individual which receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual shall only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Each entity entering into a contract or agreement under a program specified in § 1497.1 shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee, in each county in which they conduct a farming operation, in writing of those entities that shall be considered as permitted entities by a date as determined and announced by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(d) If an individual or entity fails to make such a notification as specified in paragraph (c) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (c)(2) of this section.

§ 1497.6 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management which is necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in § 1497.7 through § 1497.15 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

§ 1497.7 Individuals.

(a) An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1.497.8 Joint operations.

(a) Members of a joint operation must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the profits or losses of the joint operation.

(b) A member shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1497.6(d), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

(d) Each individual who shares in the profits or losses of such farming

operation shall be considered to be a separate person only if the individual is actively engaged in the farming operation.

§ 1497.9 Limited partnerships, corporations and other similar entities.

(a) A limited partnership, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor or active personal management must be at least 50 percent.

(b) A limited partnership, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(c) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, corporations, or other similar entities shall be considered to be one person.

(d) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last program crop in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(e) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

§ 1497.10 Irrevocable trusts.

(a) An irrevocable trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation.

(b) An irrevocable trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that an irrevocable trust which has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(c) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

§ 1497.11 Revocable trusts.

(a) A revocable trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(1) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) The beneficiaries collectively make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the operation.

(b) A grantor and the revocable trust shall be considered to be one person.

§ 1497.12 Estates.

(a) For two program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) If the deceased individual would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

(c) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1497.13 Landowners.

A person who is a landowner, including landowners with an undivided interest in land, contributing owned land to the farming operation shall be considered to be actively engaged in farming if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation when the joint operation holds title to land in the name of the joint operation if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such a member of such joint operation.

§ 1497.14 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

§ 1497.15 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

§ 1497.16 Cash rent tenants.

Any tenant that conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

(a) Active personal labor and capital, land or equipment; or

(b) Active personal management and equipment. If such equipment is leased by the tenant from:

(1) The landlord, the lease must reflect the fair market value of the equipment leased.

(2) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

§ 1497.17 Persons not considered to be actively engaged in farming.

An individual or entity who does not meet any of the provisions of § 1497.7 through 1497.15 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

§ 1497.18 Changes in farming operations.

(a) Any change in a farming operation that would increase the number of persons must be bona fide and substantive. The addition of a family member to a farming operation in accordance with § 1497.14 shall be considered to be such a change, except that such an addition will not affect the status of any other individual or entity which is added to the farming operation. A change in a farming operation in a previous year that was not considered to be bona fide and substantive shall not increase the number of persons in a subsequent year. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(1) With respect to a landowner only, a change from a cash rent to a share rent;

(2) An increase through the acquisition of land not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation if such cropland has crop acreage bases which are at least normal for the area;

(3) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been invoived in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation; or

(4) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

(5) The Deputy Administrator may determine other bona fide changes to be substantive.

§ 1497.19 Husband and wife.

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remains separate and distinct from any farming operation conducted by the other spouse.

§ 1497.20 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor if the minor is a producer on a farm and the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition it must be determined that the minor:

(1) Has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1497.21 Charitable organizations.

Charitable organizations, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may revert to an entity which exercises control or authority over such organization.

§ 1497.22 Indian tribal ventures.

Payments may be made in excess of an applicable payment limitation provision with respect to land which is owned or held in trust for an Indian tribal council and not rented or otherwise acquired by an Indian tribal venture if a responsible official of the Bureau of Indian Affairs (BIA) or the Indian tribal council certifies that no payment in excess of such limitation will accrue directly or indirectly to any individual Indian, including the individual's spouse and minor children.

§ 1497.23 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1497.24 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C of the Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1(a)(1)–(3) with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1497.25 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

§ 1497.26 Equitable adjustments.

(a) Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

(b) In cases in which the application of this part will reduce payments to a farming operation, the Deputy Administrator may waive the application of the provisions of § 1497.18 with respect to any reorganization applied for prior to April 1, 1989, or such other date as may be determined and announced by the Deputy Administrator, to the extent the Deputy Administrator determines appropriate to facilitate equitable reorganizations that do not result in an increase in payments.

§ 1497.27 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) of this section shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved which affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1497.28 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0096.

6. A new Part 1498 is added to read as follows:

PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

Sec.

1498.1 Applicability.
1498.2 Administration.
1498.3 Definitions.
1498.4 Ineligibility.
1498.5 Notification.
1498.6 Scheme or device.
1498.7 Equitable relief.
1498.8 Appeals.
1498.9 Paperwork Reduction Act assigned number.

Authority: Section 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended (7 U.S.C. 1308, et seq.).

§ 1498.1 Applicability.

This part is applicable to any type of payment, loan, and benefit made with respect to 1989 and 1990 crops. This part is not applicable to any payment, loan, and benefit which is made with respect to the production of a commodity planted, or commodity program or Conservation Reserve Program contract approved, before December 22, 1987.

§ 1498.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively). State and county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(b) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(c) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

§ 1498.3 Definitions.

(a) The terms defined in Part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active Personal Labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Alien. Any person not a citizen or national of the United States.

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity. With respect to a farming operation which consists of more than one individual or entity:

(1) Such capital which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries or related entities.

(2) Such capital which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program. With respect to a farming operation which consists of more than one individual or entity:

(1) Such land which is contributed to meet the requirements of § 1497.6(b) must be contributed directly by the individual or entity and must not have been acquired as a result of a loan made to:

(i) The farming operation in which the individual or entity has an interest;

(ii) Such individual, entity, or farming operation by the farming operation or any of its members, beneficiaries, or related entities; or

(iii) Such individual, entity, or farming operation, which was guaranteed or secured by the farming operation or any of its members, beneficiaries, or related entities.

(2) Such land which is contributed to meet the requirements of § 1497.6(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to the individuals or entities provided in items (1)(i) through (1)(iii) of this definition the loan must be a loan bearing the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, the land must be leased at a fair market value.

Lawful Alien. Any person that is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I–551 or I–151).

Payment, Loan, and Benefit. A payment, loan, or benefit made in accordance with the Agricultural Act of 1949, the Commodity Credit Corporation Charter Act, or Subtitle D of Title XIII of the Food Security Act of 1985, which results in a direct expenditure by the Commodity Credit Corporation or any other agency of the Federal government, including a payment made in accordance with Part 1470 of this title. Such term does not include the establishment of crop acreage bases, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

Substantial amount of active personal labor. Substantial amount of active personal labor means the provision of active personal labor in an amount which is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation.

§ 1498.4 Ineligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other entity shall be ineligible to receive payments, loans, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless such persons provide a substantia1 amount of active personal labor in the production of crops on a farm owned by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity which is owned by citizens of the United States and lawful aliens.

(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by such persons, the beneficial ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the entity; or

(ii) Any other date prior to the final harvest date which is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other entity shall inform the county committee of any increase in such ownership which occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, and benefit has been made, the entity shall refund such payment, loan, and benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

(c) A citizen of the United States, lawful alien, and entity which is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part or who is successor-in-interest to a program contract or agreement with respect to such a farm may receive a payment, loan, and benefit without regard to this part.

§ 1498.5 Notification.

(a) Any entity, whether foreign or domestic, who executes a program contract or agreement under which a payment, loan, and benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1498.4, are ineligible to receive a payment, loan and benefit.

(b) Such written notification should include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, and benefit.

§ 1498.6 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating any fictitious entity for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C, of the Food Security Act of 1985, such person shall be ineligible to receive payments under the programs specified in § 1498.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1498.7 Equitable relief.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

§ 1498.8 Appeals.

Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth as Part 780 of this title.

§ 1498.9 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0096.

Signed at Washington, DC, on July 29, 1988

Milton Hertz,

Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–17468 Filed 8–1–88; 5:05 pm]

BILLING CODE 3410-05-M

Federal Register

Friday
August 5, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Extension of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

[Docket No. 25627]

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for the topics of discussion announced in the Notice of Public Hearings on the *Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules* (53 FR 24178; June 27, 1988). In addition, the FAA solicits comments from the public on the management action plan that was announced in the Notice of Public Hearings document. This management action plan describes, in detail, the methodology to be used by the FAA to identify pilot and instructor certification tasks and the underlying knowledge, skills, and abilities necessary to operate the different categories, classes, and types of aircraft in today's environment. The comment period is being extended because a number of participants at the public hearings requested additional time to comment on the topics of discussion and the management action plan. This extension of the comment period will make it possible for the FAA to receive data pertinent to the review of the review of the pilot and flight instructor, pilot school, and ground instructor certification rules.

DATE: Comments on the topics of discussion and management action plan must be received on or before September 9, 1988.

ADDRESSES: Comments on the topics of discussion and management action plan may be sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC–204), Docket No. 25627, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments received and the management action plan may be examined in the Rules Docket on all weekdays, except Federal holidays, between the hours of 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Edna H. French—Manager, AFS–850 Project Development Branch or John Lynch, General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

All interested persons are invited to participate in this regulatory review by submitting written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, or economic impacts on the topics of discussion items, contained in the Notice of Public Hearing document, and on the management action plan are invited. Communications should identify the regulatory docket number, and be submitted in duplicate to the address noted previously in the **"ADDRESS"** section of this document. All communications received on or before the closing date for comments will be considered by the Administrator. The topics of discussion items and the methodology of the management action plan contained in the Notice of Public Hearing document may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 916 of the FAA Building, both before and after the closing date. A report summarizing the public comments concerning this advanced notice will also be available for review in the Rules Docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with their comments a self-addressed, stamped postcard of which the following statement is made: "Comments to Docket Number 25627." The postcard will be dated, time stamped, and returned to the commenter by the FAA.

Availability of the Notice of Public Hearing Document

Any person may obtain a copy of the Notice of Public Hearing document by submitting a request to the FAA, Office of Public Affairs, ATTN: APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this notice. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability of the Management Action Plan

A copy of the Management Action Plan is available for examination in the Rules Docket in Room 916 of the FAA Building. The hours of operation for the Rules Docket are Mondays through Fridays from 8:30 a.m. to 5 p.m., except on Federal holidays. A copy of the management action plan is also available from the person listed under "For Further Information Contact".

Background

A Notice of Public Hearing was published in the **Federal Register** on June 27, 1988 (53 FR 24178) requesting participation from the public for a regulatory review of the pilot and flight instructor, pilot schools, and ground instructor certification rules. In that Notice of Public Hearing document, the FAA announced the schedule and topics of discussion for two public hearings. One public hearing was held on July 26 and 27, 1988, at the FAA Building in Washington, DC. The other public hearing was held on August 3 and 4, 1988, at the FAA Building in Oshkosh, Wisconsin. In the Notice of Public Hearing document, the FAA listed several topics of discussion, which are restated in their entirety in the following section marked "Topics for Discussion Contained in the Notice of Public Hearing Document." A number of participants at the hearing requested additional time to comment on these topics of discussion items and also on the methodology of the management action plan. The FAA agrees with these commenters' request and extends the comment period.

Topics for Discussion Contained in the Notice of Public Hearing Document

The FAA requests the participation of all interested persons, and the identification of data, literature, statistics, research papers, or other documents, available in the public sector, that may be relevant to the issues involved in pilot and flight instructor, pilot school, and ground instructor requirements and training. Public participation would allow the FAA to consider thoroughly the topics specifically contained in this notice or raised during the regulatory review and would provide a valid and reliable basis for regulatory review of the regulations. All comments will be reviewed and considered in any future rulemaking proceedings by the FAA regarding Parts 61, 141, or 143.

Interested persons are invited to express views and to make recommendations for regulatory

changes. The issues and topics for discussion have been identified on the basis of regulatory amendments previously adopted by the FAA, petitions for exemption, letters, petitions for rulemaking, National Transportation Safety Board (NTSB) recommendations, and FAA evaluations of training and certification rules.

Participants also should address any economic consequences (e.g., implementation costs, potential savings) of the views or changes that they recommend. The FAA encourages those persons submitting comments to include any source of supporting data that may be applicable to the views or recommendations.

Although the FAA has considerable data on many of the recommendations and questions listed below, any additional data that the public may have on these recommendations and questions is requested. The FAA invites comment on the following specific topics.

1. NTSB Recommendations

a. NTSB Recommendation A–78–43: Recommendation to amend certain sections of Parts 61 and 141 to incorporate those ground and flight training items listed in FAA Report No. FAA–RD–77–26, "General Aviation Pilot Stall Awareness Training Study."

b. NTSB Recommendation A–79–96: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to have successfully completed a flight review in that class of aircraft within the preceding 24-calendar months.

c. NTSB Recommendation A–79–97: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to successfully demonstrate those multiengine flight maneuvers listed in the appropriate practical test guide (with special emphasis on those flight maneuvers relating to power loss) during the flight review recommended by NTSB Recommendation A–79–96.

d. NTSB Recommendation A–80–25: Recommendation to amend § 61.57(c) by adding provisions that establish increased currency standards for a person who serves as pilot in command of tail-configured airplanes.

e. NTSB Recommendation A–82–127: Recommendation to amend Parts 61 and 141 by establishing a minimum curriculum for those schools that conduct initial pilot qualification training in turbojet airplanes. The NTSB recommended that this curriculum establish minimum training in aerodynamics and meteorological and physiological aspects of high performance, high altitude flight.

f. NTSB Recommendation A–82–128: Recommendation to require an applicant seeking an initial type rating in a turbojet airplane to have completed an FAA-approved training curriculum which establishes minimum training hours.

g. NTSB Recommendation A–82–129: Recommendation to require applicants seeking type ratings in turbojet airplanes to successfully demonstrate pilot competency in handling characteristics of high altitude flight at airspeed ranges compatible with the specific flight envelope for that airplane.

2. Terminal Control Area (TCA) Task Force Recommendation No. 24

Recommendation to revise Part 61 to require flight instructors to report to the FAA the completion of all biennial flight reviews.

3. Addition or deletion of pilot and instructor certificates and ratings

a. What additional pilot, flight instructor, and ground instructor certificates and ratings (e.g., powered/self launching glider ratings) are needed?

b. Which pilot, flight instructor, and ground instructor certificates or ratings should the FAA consider to be obsolete or unnecessary?

4. Type rating requirements

a. What changes should the FAA consider to the type rating certification requirements of Part 61?

b. What changes should the FAA consider on the issue of when a type rating is required?

c. What changes should the FAA consider to improve the pilot-in-command proficiency requirements of § 61.58 and the second-in-command proficiency requirements of § 61.55?

5. Annual check and recency of experience requirements

a. What changes should the FAA consider concerning the biennial flight review requirements of Part 61?

b. Should the FAA establish additional criteria concerning recency of experience requirements?

6. Minimum certification requirements

a. What changes should the FAA consider to improve the pilot and instructor eligibility standards?

b. Should the FAA establish a minimum age eligibility standard for student pilots to log flight time toward a pilot certificate?

c. What experience requirements are appropriate for flight instructors providing instruction to persons applying for a flight instructor certificate?

d. Should applicants for a flight instructor certificate be required to demonstrate spins on flight tests (in the case of airplanes) and autorotations (in the case of helicopters)? If so, what is the justification for establishing these additional requirements?

7. Pilot and instructor privileges and limitations

a. What changes are needed concerning pilot and instructor privileges and limitations?

b. Should the FAA consider expanding some pilot and instructor privileges and limitations? If so, what privileges and limitations should be considered?

c. What changes to the ground instructor ratings and privileges are necessary and appropriate?

8. Military pilots and foreign pilots

a. What changes should the FAA consider concerning FAA certificates issued to rated military pilots or to former rated military pilots on the basis of military pilot qualifications and experience?

b. What additional safety considerations should the FAA address concerning FAA pilot certificates issued to foreign pilots who do not understand or speak English?

9. Flight and ground instructor endorsements and recordkeeping

a. What revisions should the FAA consider to the written test and flight test prerequisites of Part 61?

b. What changes are appropriate regarding flight instructor endorsements for student pilot solo flights?

c. What changes are necessary concerning flight instructor recordkeeping requirements?

d. Should the regulations allow flight instructors to place limited endorsements on student cross-country flights (e.g., limited endorsements concerning weather minimums, wind limitations, or specified time frames for commencement or completion of a trip)?

e. What changes are appropriate regarding the amount of flight instruction that an instructor may give in a 24-hour period (including instruction given in a simulator or training device)?

10. Schools certificated under Part 141

a. Are there alternatives to the "pass-rate" percentage requirements of § 141.5(b) used to determine the quality of instruction given to students in order

for an applicant to receive approved pilot school status?

b. Are there alternatives to the "pass-rate" percentage requirements of § 141.63(b)(2) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain examining authority status?

c. Are there alternatives to the "pass-rate" percentage requirements of § 141.83(a) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain approved pilot school status?

d. What measures can be developed to ensure that Part 141-approved curricula and training course outlines evolve to meet changing training and regulatory needs?

e. What changes are appropriate for the chief flight instructor or the assistant chief flight instructor with respect to eligibility and currency requirements?

f. What changes are appropriate concerning a chief flight instructor's availability and responsibilities during times when flight instruction is being conducted (including availability and responsibilities during instruction at a satellite base)?

g. What should be required of a chief flight instructor with respect to the designation of assistants to conduct phase and end-of-course flight checks?

h. Which additional certificates and ratings should the FAA allow an approved pilot school to add to the school's examining authority?

i. What are some appropriate limitations and allowances that need to be addressed concerning flight students who transfer between Part-141 approved pilot schools?

j. What alternatives should the FAA consider concerning the rules that relate to the recordkeeping requirements of Part 141?

k. What changes should the FAA consider to the method by which a provisional pilot school progresses to approved pilot school status?

11. Clarification of terms and definitions

a. How should the phrase "preflight planning," as it is used in Part 61, be defined?

b. How should the phrases "high performance airplane" and "complex airplane" be defined and what restrictions or privileges are applicable to the operation of those airplanes? For example, should commercial certification requirements be revised to allow the use of airplanes (e.g., turbojet or turboprop airplanes) that are more sophisticated than implied by the current definition of "complex airplane?"

c. What kinds of operations should be covered or excluded by the phrase "compensation or hire?"

In addition to consideration of the issues listed above, the FAA may consider rulemaking action that would eliminate obsolete phrases and sections of the regulations and that would result in minor editorial changes to Parts 61, 141, 143.

Extension of Comment Period

In consideration of the requests for additional time to comment on the topics of discussion items and methodology of the management action plan, the FAA concludes that extending the comment period for an additional 30 days would serve the public interest. Accordingly, the comment period will close on September 9, 1988.

D.C. Beaudette,

Acting Director of Flight Standards.

Issued in Washington, DC, August 2, 1988.

[FR Doc. 88-17750 Filed 8-3-88; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
August 5, 1988

Part IV

Department of the Interior

Bureau of Land Management

Federal Coal and Other Solid Mineral Leases; Royalty Reduction Guidelines; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-660-08-4121-02]

Federal Coal and Other Solid Mineral Leases; Royalty Reduction Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed action.

SUMMARY: Notice is hereby given of the Bureau of Land Management's (BLM) intent to amend its procedural document entitled "Royalty Rate Reduction Guidelines for Solid Minerals," based on a BLM royalty rate study. The guidelines implement section 39 of the Mineral Leasing Act, and were issued on June 26, 1987, (52 FR 24347, June 30, 1987).

DATE: Written comments on this notice and on the BLM study should be submitted by October 4, 1988.

ADDRESSES: Copies of the guidelines and of the BLM royalty rate study can be obtained from: Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240. Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Room 5555, Washington, DC 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240, (202) 343-9435.

SUPPLEMENTARY INFORMATION: Section 39 states in part: "The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, (and a list of other minerals), and in the interest of conservation of natural resources, is authorized to * * * reduce the royalty * * *, whenever in his judgment it is necessary to do so, in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms therein."

In 1976 during the debate regarding President Ford's veto of the Federal Coal Leasing Amendments Act (FCLAA), Congress further clarified this authority with such statements as, "* * * The Secretary of the Interior can reduce that 12.5 percent to 7 percent, 5 percent, or 3 percent. He has always had the right to do that. * * * He can cut the royalty down to whatever he wishes." (122 Cong Rec. 25459 (August 4, 1976)). Further, a recent Interior Board of Appeals (IBLA) decision states that the authority conferred by section 39 is discretionary and thus enables the BLM to exercise professional judgment to make decisions which best protect the economic and resource interest of the United States as owner of the mineral estate (Peabody Coal Company, 93 IBLA 326, 328, and 334 (1986)).

To provide implementing guidance for the exercise of this discretion to lower royalty rates, the BLM adopted procedural guidelines on June 26, 1987. The procedures provided for royalty reductions in four categories:

- 1. *Expanded Recovery:* Where a lessee certifies that, without a royalty rate reduction, either: (a) Adverse geologic and engineering conditions make the solid leasable mineral resources identified in the application economically unrecoverable at the lease royalty rate using current standard industry operating practices, or (b) the lease royalty rate, all geologic and engineering conditions being the same or similar, makes the solid leasable mineral resources identified in the application likely to be bypassed because they are less economically recoverable than resources on non-Federal leases that are part of the near-term mining sequence within the same operation.
- 2. *Extension of Mine Life:* Near the end of mine life, where a reduced royalty rate would extend the period during which mining would occur and thereby encourage the greatest ultimate recovery of solid leasable mineral resources.
- 3. *Financial Test—Unsuccessful Operations:* Where operations on a lease are not financially profitable under the terms of the lease, with lease operating costs exceeding lease production revenue.
- 4. *Financial Test—Expanded Recovery/Extension of Mine Life:* Where lessees qualifying under categories 1 or 2 above request a royalty rate reduction to a level below the specified rates set forth in the guidelines for those categories.

The BLM is revising the royalty rate reduction to add an additional category to facilitate expedited administrative handling of certain reduction applications. The category would contain criteria that recognize the pervasive existence of market conditions associated with coal resources on certain Federal lands. Those resources occur in States where the Federal deposits are currently being forgone in favor of deposits on non-federal lands due to the significant royalty rate differential between Federal and non-Federal coal leases. This new criterion is being added to recognize the non-competitive nature of some Federal coal deposits and, in order to promote development, permits the exercise of authority to reduce royalties.

The following five criteria will be used in determining whether applications for royalty rate reduction qualify under the regional royalty rate differential category. The applicant must show that:

1. The Federal Government is not market dominant;
2. Federal royalty rates are above the current market royalty rate for non-Federal coal in the area;
3. Federal coal would be bypassed or remain undeveloped due to the royalty rate differential;
4. The above conditions exist throughout the region or State; and
5. A regional royalty rate reduction is not likely to result in undue competitive advantages over neighboring regions.

In the areas where lessees qualify for a rate adjustment due to a regional royalty rate differential situation, BLM personnel will compile information regarding royalty rates on non-Federal coal leases, determine an appropriate regional royalty rate for Federal coal resources, and publish that rate locally.

The BLM personnel will review the application for completeness and confirm the likelihood of Federal coal being bypassed or not being developed due to the presence of a royalty rate differential.

For approved royalty rate reductions in this category, the term of the rate reduction shall be to the next readjustment date of the lease under consideration. Upon readjustment, the royalty rate will be set at the rate established by statute or regulation or as specified in the lease document.

At the time of the notification of readjusted terms and conditions, the lessee will need to reapply if conditions still exist which merit a royalty reduction in this category.

Applications will be submitted to the appropriate BLM State Director, under whose auspices all requisite analyses and determinations will be completed in accordance with the guidelines. The decision to approve or deny a royalty reduction under this category will be made by the appropriate State Director, following coordination with the affected Governor. The BLM State Director's authority to act on royalty rate reduction applications for coal leases is contained in regulations at 43 CFR 3485.2(c)(1).

If approved, the royalty rate reduction shall be in effect as of the date of the filing of a completed application.

Payments made in the interim period between application and approval will be at the lease rate. If a royalty rate reduction is granted, any payments already made in excess of the reduced royalty rate will be credited against future royalty payments. Regional royalty rate reductions do not alter the legal obligation with regard to the payment of advance or minimum royalty in lieu of annual production or on the "bonus" bid received in a competitive lease sale.

These guideline amendments are based in part on a study entitled "The Competitive Position of Federal Coal in North Dakota, Alabama, and Oklahoma." Comments are solicited on both the study itself and the possible use of the new criteria to expedite consideration for a royalty reduction.

Following the determinations by BLM of an appropriate regional royalty rate in North Dakota, Alabama, and Oklahoma, applications from operators in those States will be accepted for consideration under the regional royalty rate reduction guidelines, as amended to reflect this new category. Application procedures are similar to those established in the present guidelines. However, for this new category the applicant merely must certify that its circumstances are consistent with those conditions already documented for this area.

Based on petition from operators, affected users, or Governors of States involved, BLM may conduct future studies to determine if other areas may be included in this category.

July 26, 1988.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 88-17654 Filed 8-4-88; 8:45 am]

BILLING CODE 4310-84-M

federal register

Friday
August 5, 1988

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 74 et al.

Medicare, Medicaid and CLIA Programs; Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratory Improvement Act of 1967 Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 74, 405, 416, 440, 482, 483, 488, and 493

[HSQ-146-P]

Medicare, Medicaid and CLIA Programs; Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise regulations for laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA) programs. The revisions would recodify the regulations for these programs into a new Part 493 in order to simplify administration and unify the health and safety requirements for all programs as much as possible. We propose to have a single set of regulations for the three programs, with an additional subpart for the licensure procedures unique to the CLIA program.

We propose to revise the regulations to remove outdated, obsolete and redundant requirements, make provision for new technologies, place increased reliance on outcome measures of performance, and emphasize the responsibilities and duties of personnel rather than the formal credentialing requirements and detailed personnel standards in existing regulations. We would provide for new uniform proficiency testing standards and add requirements for additional specialties, such as cytogenetics.

DATE: To ensure consideration, comments must be received by November 3, 1988.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: HSQ-146-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to: Allison Herron, Office of Information and Regulatory Affairs, Room 3208 New Executive Office Building, Washington, DC 20503.

In commenting, please refer to file code HSQ-146-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Pamela Renner, (301) 966-6818.

SUPPLEMENTARY INFORMATION:

I. Background

Multiple Laboratory Activities

Under the Medicare program, we pay for diagnostic services furnished to beneficiaries by a variety of laboratories. These include a laboratory that is "hospital-based" (that is, it is located in or it is under the supervision of a hospital), located in a physician's office, or is "independent" (not a hospital-based and not a rural health clinic, a group medical practice or a physician's office). By statute, the definition of a hospital contained in Section 1861(e) of the Social Security Act (the Act) extends Medicare participation to hospital laboratories. The paragraph following section 1861(s)(11) and sections 1861(s) (12) and (13) provide coverage for independent laboratory services.

Under the Clinical Laboratories Improvement Act of 1967 (CLIA), laboratories engaged in testing in interstate commerce must meet the requirements of Section 353 of the Public Health Service Act (42 U.S.C. 263a) in order to be licensed or remain licensed for testing in interstate commerce.

Medicaid, under the authority of Section 1902(a)(9)(C) of the Social Security Act, pays for services furnished only by laboratories that meet Medicare conditions for coverage. Because participation in the Medicaid program is governed by Medicare rules, henceforth when we refer to Medicare we are including Medicaid.

Various State laws govern licensure requirements for laboratories engaged in intrastate commerce. There are also Medicare-Medicaid requirements that laboratories must meet in terms of personnel qualifications and accuracy of test results. Under existing regulations, the laboratory requirements are integrated with other requirements applicable to the provider or supplier. Thus, conditions of participation for a hospital-based laboratory are found in the hospital conditions of participation in 42 CFR 482.27. Laboratories in skilled nursing facilities must meet the same conditions of participation as laboratories in hospitals. Conditions for coverage of independent laboratory services are found at 42 CFR 405.1310 to 405.1317. Except for laboratory services furnished by a physician, group medical practice, or rural health clinic or a few services furnished by an end-stage renal disease facility, which are not subject to our rules, laboratory services furnished by any entity other than a hospital or skilled nursing facility are governed by our rules concerning independent laboratories.

Regulations found at 42 CFR Part 74 implement Section 353 of CLIA.

A CLIA laboratory and any other entity identified as a laboratory under title XVIII of the Social Security Act that wishes to receive payment for its services from Medicare or Medicaid must meet Medicare's conditions of participation or conditions for coverage of services.

A laboratory that fails to meet the Medicare conditions for coverage for a given specialty is not "approved" for payment of services for that specialty. The loss of approval ("termination of approval") or failure to be approved initially results in no payment from Medicare or Medicaid for the services in the failed specialty. Failure to meet CLIA requirements for a category of services or a specific test results in the loss of licensure, or licensure is denied, for the category of services or that test. A laboratory may fail general conditions and fail to become approved for Medicare reimbursement for any specialty; similarly, a CLIA laboratory failing to meet general requirements would not be licensed for any tests.

Federal Oversight Activities

HCFA, under an interagency agreement and a memorandum of understanding (MOU) with the Public Health Service (PHS), has administrative responsibility for both the Medicare and CLIA programs. However, PHS (for the Food and Drug Administration (FDA)) has primary responsibility for the provision of technical advice on blood bank programs, including the revision of regulations concerning blood and blood products. An MOU in 1980 between HCFA and PHS (FDA) resulted in a reduction in the duplication of the inspection responsibilities in the area of blood banking and transfusion services and in a more coordinated follow-up on the transfusion related fatalities

reported to FDA. Before the establishment of HCFA in 1977 and the signing of an interagency agreement, PHS, through the Centers for Disease Control (CDC), was responsible for the CLIA program. The most recent MOU between HCFA and CDC further delineated responsibilities by specifying that HCFA is responsible for developing regulations that relate to Medicare and CLIA and that CDC is responsible for assisting HCFA in obtaining technical and scientific expertise.

Over the past few years, we have been working with CDC and FDA in reviewing the various departmental regulations concerning laboratories to determine the appropriate modifications and revisions. This process has included meetings of HCFA, FDA and CDC with various private-sector organizations, concerned members of the laboratory industry and the public, State health officials, and other Federal agencies. Our review indicated the need for revising the regulations because of a lack of uniformity in the various laboratory program requirements, obsolete or redundant requirements, and the numerous changes in technology and data management systems that have occurred since the regulations were originally written.

The Department commissioned a study on clinical laboratories (Final Report on Assessment of Clinical Laboratory Regulations (April 1986)) that recommended that HHS review the existing regulations to determine how to improve the assurance of quality laboratory testing and to achieve as much program uniformity as possible. We determined that the best approach to achieve these goals was to revise both the CLIA and Medicare/Medicaid regulations concerning laboratories, since the various regulations are interrelated.

Legislation

Section 4064 of the Omnibus Budget Reconciliation Act of 1987 (OBRA' 87), Pub. L. 100–203, enacted on December 22, 1987, amended the sentence following section 1861(s)(11) by requiring that physicians' offices that perform more than 5000 tests per year must meet conditions relating to the health and safety of individuals with respect for whom such tests are performed. This amendment applies to tests performed on or after January 1, 1990. We are not proposing regulations at this time to implement this legislation. However, we recognize that some of the standards in this proposed rule might also be applicable to tests run in physician office laboratories. Therefore, we ask commenters to inform us whether and on what basis they believe the standards we are proposing in this rule would be appropriate to apply to tests run in physician office laboratories.

Consolidation of Regulations

In this proposed rule we propose to consolidate all CLIA and Medicare-Medicaid laboratory requirements in a new 42 CFR Part 493. We propose to remove outdated and overly prescriptive requirements. We would require laboratories to comply with the health and safety standards of other Federal, State and local agencies and our decisions to approve or license laboratories would be affected by their compliance with these laws. We would also add provisions requiring facilities to develop and implement their own internal quality assurance programs, and we would also provide for increased reliance on outcome measures by using quality control and proficiency testing data in the assessment of laboratory performance.

Laboratory testing in both physicians' offices and rural health clinics that perform no tests on referral would not be subject to these revisions because both the Medicare and CLIA statutes (the sentence following § 1861(s)(11) of the Act and section 351(i) of the PHS Act, respectively) preclude the regulation at this time of physician office laboratories and of rural health clinics that perform tests only for their own patients. (As mentioned earlier, section 4064 of the Omnibus Budget Reconciliation Act of 1987 amended section 1861(s) of the Social Security Act to require the regulation of physician office laboratories performing more than 5000 tests a year effective January 1, 1990.)

II. Purposes of the Proposed Revisions

We propose to recodify and revise existing laboratory regulations to accomplish several goals.

- We intend, as stated above, to consolidate current laboratory requirements into one new part to make these requirements uniform—to the extent possible—from one provider or supplier to another and between CLIA and Medicare. Thus, a laboratory seeking CLIA licensure or approval for payment for services to Medicare or Medicaid beneficiaries would look in only one part of the regulations. Similarly, a laboratory operated by a skilled nursing facility would not be governed by regulations in two separate parts (one for hospitals and one for independent laboratories) as it is currently.

- Another major goal of the proposed regulation is to have, to the extent possible, the same requirements for both CLIA and Medicare. HCFA is responsible for implementing the requirements for both CLIA and Medicare; approximately 1300 of the 1500 CLIA laboratories also participate in Medicare. One agency imposing different program requirements on the same laboratory is confusing. As the major difference between CLIA and Medicare is that CLIA laboratories engage in interstate commerce, there is no compelling reason (other than where the statute requires) for having dissimilar requirements. These regulations would require that a laboratory that is denied approval for Medicare or Medicaid coverage also be denied licensure under CLIA.

To this end, we are proposing to revise requirements relating to personnel, proficiency testing, quality control, the applicability of the regulations, compliance with State and local laws, recordkeeping and inspection.

- We intend to revise our personnel standards so that personnel requirements are not focused primarily on qualifications but on the accurate performance of laboraory tests. Current hospital laboratory personnel requirements are not based on credentials for individuals other than the laboratory director, but current independent laboratory requirements specify credentials for laboratory director, technical and general supervisors, technologists, cytotechnologists, technicians and technician trainees. We would combine hospital-based and independent laboratory requirements and establish consistent requirements for all laboratories.

- We would impose a new quality assurance program on all laboratories. This provision would require a laboratory to be responsible for the quality of its services and provide the laboratory with the flexibility to evaluate the competency of technical staff.

- We also intend to update current internal quality control requirements for each specialty and subspecialty, taking into consideration current and future technological advances. We propose to emphasize the importance of quality control and we would make failure of quality control in a specialty or subspeciality result in the loss of approval or licensure in that specialty or subspecialty.

- We intend to revise the current Medicare and CLIA proficiency testing

requirements considerably. We would require every laboratory to enroll and participate successfully in an approved proficiency testing program for each specialty and subspecialty for which there is an approved program and for which the laboratory seeks or has Medicare approval or CLIA licensure. The proficiency testing programs would have to meet our requirements, including grading criteria, in order to be considered an approved program for purposes of our regulations.

- We propose to update the licensure requirements applicable only to CLIA laboratories by eliminating overly-prescriptive requirements, such as those involved with annual license renewal.
- We propose to require Medicare laboratories to comply with Federal laws concerning health and safety and CLIA laboratories to comply with Federal, State and local laws concerning health and safety. Currently, a laboratory out of compliance with a State or local law may lose its Medicare approval but retain CLIA licensure, an inconsistency that this regulation would eliminate.

III. Proposed Rule

General Approach

We propose to revise the standards for all laboratories participating in Medicare or Medicaid or licensed under CLIA to provide as much uniformity as possible within these programs. (For these proposed regulations we would not consider a physician or group of physicians that performs tests only on his, her, or their own patients as a laboratory; however, the OBRA's change concerning physicians performing 5000 tests does not distinguish between tests done on referral and those that are not.) There are certain limitations on the extent to which the regulations can be unified because of differences in the Medicare and CLIA statutes.

The new Part 493 would have ten subparts dealing with general provisions, administration, proficiency testing, proficiency testing programs, patient test management, quality control, personnel, quality assurance, inspection, and requirements unique to CLIA laboratories and CLIA licensure procedures. The regulations affecting other facilities that have requirements for laboratory services would be modified by cross-referring them to the new regulations.

Under the Medicare program, conditions of participation or for coverage are the requirements that an entity, such as a laboratory, must meet in order to participate and have tests paid for by Medicare or Medicaid. Each condition is usually comprised of one or more standards, which enumerate activities, outcomes, or other requirements that, upon evaluation by HCFA or a State survey agency under contract with HCFA, serve as the basis for determining that a particular condition has been satisfied. If the laboratory fails to comply with any condition for coverage, we initiate an adverse action to terminate the laboratory's participation in Medicare or revoke the laboratory's licensure under CLIA. The adverse action may be taken by terminating a laboratory's participation or licensure in a specialty or subspecialty if the deficiencies are limited to particular categories of testing or the laboratory's approval for all services may be terminated if the deficiencies are pervasive, affecting the overall services offered by the laboratory.

Unless otherwise identified in our regulations, standards refer to the condition immediately preceding them. Depending on the complexity of the subject matter a standard may be designated as a regulation section or subsection. A subordinate designation does not imply that some standards are more important than others.

Subpart A—General Provisions

1. Section 493.1, Basis and Scope

In a new § 493.1, Basis and scope, we would indicate the sections of the laws that apply to the new part—sections 1861 (e) and (j), the sentence following section 1861(s)(11), sections 1861(s) (12) and (13) and 1902 of the Social Security Act and section 353 of the Public Health Service Act. We intend for this part to apply to all independent and hospital-based laboratories, intermediate care facilities for the mentally retarded, skilled nursing facilities and ambulatory surgical centers that perform laboratory services, rural health clinics that perform tests on referral, and physicians' offices that perform any tests on referral.

2. Section 493.2, Definitions

It is our practice to define terms whose meanings may not be clear from their context or where we apply an interpretation that may not be commonly used. This section would contain definitions that are applicable to both Medicare and CLIA. We would eliminate requirements of present regulations that we feel are unnecessarily prescriptive; hence, many definitions found in current §§ 405.1310 and 74.2 are no longer necessary.

- Independent laboratory—

Currently, "independent laboratory" is defined in § 405.1310(a). We propose to delete the definition of "independent laboratory" from the definition section because it placed emphasis on location and ownership, conditions no longer considered relevant under this proposal. We would remove the exception in the present definition for laboratories maintained by physicians that accept no more than 100 specimens on referral in any category during any calendar year because our experience has not shown that the definition is effective in assuring that physician office laboratories limit testing of specimens received on referral. Rather, we will continue to enforce rigorously our requirement that Medicare-approved laboratories refer tests only to approved laboratories. We would maintain the exception for physician office and rural health clinic laboratories that perform no tests on referral. Under this proposed rule these rural health clinics and physician office laboratories that perform any tests on referral would be required to meet these conditions for coverage of services of laboratories.

In addition, on January 1, 1990, the legislative provision requiring that physicians performing 5,000 or more tests per year must meet health and safety conditions will go into effect.

- Clinical Laboratory—

Currently, under § 405.1310 a clinical laboratory is a facility for the examination of the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for purpose of diagnosis, prevention or treatment of disease or assessment of a medical condition. Section 74.2(a) makes Part 74 applicable to laboratories engaged in the laboratory examination of, or other laboratory procedures relating to, specimens solicited or accepted in interstate commerce for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment, or the assessment of the health, of human beings.

Our proposed definition of a clinical laboratory would remove the word "clinical". It does not add anything to the definition and may create confusion, since we also pay for the services of independent laboratories, hospital laboratories, etc., which perform anatomic services, which are generally not considered part of clinical laboratory services. In addition, our definition would differ from that currently in § 405.1310(b) and § 74.2(a) since we would include in the

examination of material derived from the human body screening tests and any test where a measurement is made on an analyte (test) or where a procedure is performed.

We would make this modification because, in the case of CLIA laboratories, there have been questions concerning the applicability of CLIA to certain screening procedures, such as drug testing or HIV (AIDS) testing. Some people believe that these tests are not subject to regulation because they would indicate a drug level or presence of HIV virus and are not a diagnosis or an assessment of health and thus subject to regulation. However, these tests are currently reimbursed under Medicare and Medicaid and are considered test procedures for health assessment. Therefore, in moving the definition in § 74.2(a) and § 405.1310(b) to new § 493.2 we would expand it to provide uniformity between Medicare and CLIA and to clarify the types of procedures covered by the regulations.

We would not consider as laboratories those facilities that only collect specimens and do not perform testing. We also would not consider mailing services as laboratories if they just send out reports, the testing laboratory assumes responsibility for the report, and the name and address of the testing laboratory is on the report.

• Proficiency testing—

We would not include a definition of proficiency testing because the two proposed subparts, C and D, include extensive discussion of proficiency testing. We propose to provide criteria for State and private-sector programs to meet in order to be approved for use in the Medicare and CLIA programs. Laboratories would have to enroll in these approved programs to meet DHHS' requirements for successful participation in a proficiency testing program for both CLIA and Medicare.

• Personnel requirements—

Terms currently contained in paragraphs (d), (e), (g), (h), (i) and (k) in § 405.1310 and in § 74.1(c) would not appear in our proposed rule. Therefore, these definitions are no longer required.

• Radiobioassay and histocompatibility—

We would not include the current definitions for radiobioassay and histocompatibility in § 405.1310 (l) and (m) and for radiobioassay in § 74.1(i) since these terms are cleary explained elsewhere in the proposed regulations.

• Authorized person—

We would add a definition of "authorized person" as the person authorized to order and receive tests. Under Medicare that person is a physician as defined in section 1861(r) of the Act. We would permit other individuals, including patients, to be "authorized persons" when State law and Medicaid allows. This would reduce the conflict between Federal and State law over who can order and receive tests and would defer to the States for Medicaid purposes as well as to the State where Federal funding under Medicare or Medicaid is not involved.

• Consultation—

We would not include two definitions currently contained in § 405.1310. "Consultation" and "Secretary" do not appear in proposed new Part 493. (We use, instead of "Secretary," "HHS," which is defined in Part 400.)

• Miscellaneous—

+ "Referee laboratory", which is a laboratory used for comparison of proficiency test results, would be defined as it is currently in § 74.1(j).

+ Reference laboratory", currently defined in Part 74.1(k), would be deleted because the proposed proficiency testing program does not include the term "reference laboratory" in defining grading criteria.

+ We would explain what "CLIA" stands for.

+ We would define "accredited laboratory" based on current § 74.1(c), including the current definition of "approved accreditation body" that is now in § 74.1(e)

+ Accredited institution," "director," "health insurance program," and "physician" now defined in Part 74 would be excluded from our proposed rule as duplicative or unnecessary. "Specimen" would be defined as it appears in current § 405.1310 and § 74.1(b).

+ We would define "challenge" and "target value," which are related to the proficiency testing requirements.

Subpart B—Administration

Section 493.11 Condition—Compliance With Federal, State and Local Laws

Present Medicare requirements in § 405.1311 relating to compliance with State and local laws do not include compliance with Federal laws related to health and safety nor do current requirements under CLIA. We do not believe that a laboratory should be certified if it is not in compliance with other Federal regulations concerning patient health and safety. New § 493.11 would include this requirement.

The requirement to comply with Federal, State and local laws would also apply to CLIA laboratories. This requirement is more stringent that CLIA requirements currently in § 74.30, which requires compliance with State laws for personnel standards only, by cross-referring to the Medicare standards. The inclusion of these provisions for CLIA laboratories would eliminate the requirement for a State survey agency to inspect the laboratory for CLIA licensure purposes when the laboratory cannot operate in the State because of noncompliance with State laws. In the case of laboratories participating in both the Medicare and CLIA programs, which are the majority of interstate laboratories, unifying the requirements to assure compliance with State and local laws would eliminate the possibility of laboratories being acceptable under CLIA and unacceptable in the Medicare program for the same test procedures.

We would require compliance with the existing regulatory programs covered by State and local laws for fire safety and with State, Federal and local laws on environment and health-related matters.

Proposed § 493.11 would not include the requirements in present § 405.1316(c) concerning who may draw specimens from a patient, as this issue is governed by State law if such requirements exist.

Subpart C—Participation in Proficiency Testing

Present regulations at 42 CFR 405.1314(a) and Part 74, Subpart E require laboratories to participate in proficiency testing (PT) programs. We would greatly expand these requirements. A new Subpart C would contain the general requirements a laboratory must meet for PT and would elevate current requirements for enrollment and successful participation to the condition level.

The new PT requirements would emphasize the increased importance attached to obtaining a passing score on samples with known contents as an outcome measure of the quality of testing in laboratories. CDC, under an Interagency Agreement with HCFA, established a Task Force that developed proposed PT requirements in response to our request for a PT program that could be applied to both Medicare and CLIA laboratories.

Although specific requirements for a PT program are included for CLIA laboratories in 42 CFR Part 74, minimally acceptable requirements for Medicare-approved laboratories have never been described by HHS in terms of program content, challenge, frequency of PT shipments or testing events and grading criteria for individual analytes and specialties and subspecialties. As a consequence, State and private organizations have offered PT programs

that have been approved for Medicare purposes. These programs vary considerably in degree of challenge and grading criteria from each other and from the existing CLIA PT requirements.

Our proposed regulatory revisions would focus on assessing the quality of laboratory tests that are commonly performed or have results critical to the patient's health (e.g., an incorrect result has a moderate to high risk of death), or both. In the future we hope to include additional tests in areas such as histopathology, cytogenetics and drug abuse testing. We also propose to exclude from the proposed PT program those test areas for which no performance problems are evident, such as routine urinalysis, and to continue to reevaluate the necessity for PT for other test areas in the future.

The regulations would include a PT grading system by specialty and subspecialty. The current CLIA requirements in 42 CFR Part 74 include a composite score for a few specialty areas but do not include a scoring system for most areas that would provide for a determination to be made of the overall performance of the laboratory in each specialty and subspecialty.

The proposed PT requirements would apply to selected tests, named in the regulations. It is neither possible nor currently feasible to evaluate every test a laboratory can perform by PT, since many tests are not available in PT programs presently offered. The tests and analytes we selected for challenge are representative of the laboratory's ability to perform in each specialty and subspecialty.

These proposed regulations would make adverse actions based on unsuccessful PT performances consistent for laboratories approved under Medicare and those licensed under CLIA.

The Medicare program currently requires successful participation in a PT program in each specialty and subspecialty. We do not currently provide States with criteria for determining successful participation for specialties and subspecialties. Hence, under Medicare, States may establish individual protocols for evaluating PT performance and these evaluations vary from State to State.

Under CLIA, HCFA may take an adverse action against a laboratory by removing licensure for individual tests. However, current CLIA PT regulations do not provide for grading PT performance by specialty or subspecialty except for bacteriology, mycology and parasitology, which are not graded by test but are graded by overall subspecialties.

Therefore, with the exception of the subspecialties of bacteriology, mycology and parasitology, adverse actions proceed test by test as unsatisfactory performance occurs with no provisions for removing licensure by specialty or subspecialty even though the laboratory may be performing related methodologies in the same specialty or subspecialty. Moreover, a laboratory could fail all PT testing in a particular specialty or subspecialty and lose its license for those tests but would still be allowed to perform related testing in the specialty or subspecialty because PT testing is not offered for all tests categorized in a specialty or subspecialty.

In the Medicare program, we approve and disapprove independent laboratories by specialties and subspecialties rather than by individual tests. The Medicare carrier is notified of the laboratory's approval by specialty and subspecialty, not by test(s) performed. It is not feasible under Medicare to terminate approval for individual tests since thousands of tests are involved. Monitoring laboratories' continuous changes in approval status by individual tests is not effective since test offerings change frequently and updates to the States, regions and carriers would always lag behind changes in laboratory services.

We have decided that the development of a specialty and subspecialty grading system is the most reasonable and appropriate mechanism to monitor quality of testing. Since our intent is to make the Medicare and CLIA programs as consistent as possible and to provide an overall assurance of the quality, we propose to require identical mechanisms of assessing PT performance for CLIA and Medicare laboratories. We propose a unified assessment to be made by the Medicare State survey agency or HHS in determining the licensure and Medicare approval status of a laboratory by specialty and subspecialty. The State survey agencies would receive a single set of PT data and would consistently determine compliance for the two programs at the same time. A laboratory failing the PT requirements and the enhanced PT requirements would lose Medicare approval for the specialty or subspecialty. Similarly, a CLIA licensed laboratory would be notified of any PT failure and, if a hearing is not requested, the license would be revoked for the specialty or subspecialty.

Currently, a laboratory may enroll in one or more PT programs to satisfy Medicare requirements and a different program to satisfy requirements under CLIA. The proposed modification of the regulation would require laboratories to specify the PT program it is using to meet the Medicare or CLIA requirements (or both). It would not preclude a State or private-sector accreditation program from having different standards for its own program purposes but it would require that laboratories be enrolled and successfully participate in a PT program that meets the Federal criteria.

We would introduce requirements for an enhanced PT program in § 493.25, Condition: Enhanced proficiency testing. If a laboratory were to perform unsuccessfully in PT, it would be able to request enrollment in an enhanced PT program within 15 days of notification of unsuccessful performance in order to prevent immediate termination for that failed specialty or subspecialty. While the laboratory is participating in the enhanced PT program, Medicare approval and CLIA licensure, as applicable, for the tests performed under the specialty or subspecialty would continue. If the laboratory also fails the enhanced PT, we would initiate termination of Medicare approval or revocation of CLIA licensure, as applicable, for the failed specialty or subspecialty. By instituting the enhanced PT program, we would not be penalizing a laboratory for one set of aberrant results. The laboratory during this period of participation in enhanced PT would be able to undertake any necessary corrective action while also demonstrating sustained successful performance in the failed specialty or subspecialty.

In the new section on enhanced PT (§ 493.25), we propose that laboratories that fail PT must successfully participate in an enhanced PT program for three consecutive shipments, testing events or combination thereof in the failed specialty or subspecialty in order to prevent immediate termination of approval or licensure for the specialty or subspecialty. The enhanced PT program would consist of more specimens per shipment or testing event than what is required in the routine PT and may be at a frequency greater than quarterly. Enhanced PT may consist of challenges to cover the overall specialty or subspecialty or it may consist of individual analyte challenges, depending upon the laboratory's PT failure. If laboratory performance falls below the acceptable level after one, two or three shipments or testing events of enhanced PT, approval of the applicable specialty or subspecialty would be terminated, licensure

revocation proceedings instituted, or both. If a laboratory's Medicare participation were terminated or its CLIA license were revoked as a result of a PT failure, the laboratory's participation or licensure for the applicable specialty or subspecialty could not be reinstated until the laboratory demonstrated sustained successful performance in three consecutive shipments or testing events (or combination) of enhanced PT. The proposed acceptable levels for enhanced PT (80 percent of results within limits for categories of testing; and for individual analysis: 5 of 6 results for one shipment, 10 of 12 for two shipments and 15 of 18 for three shipments) are based on statistical calculations and intended to detect substandard performance without falsely identifying competent laboratories. For these calculations, a competent laboratory is assumed to have less than a one percent chance of exceeding the acceptable limits established for each analyte. We ask for comments regarding other alternative enhanced PT schemes, for example, the desirability of requiring satisfactory scores on five of six results for each of two shipments, rather than requiring satisfactory scores on five of six results for each of three shipments. We seek comments on the ability of laboratories, including physician office laboratories, to meet these criteria, and the adequacy of these criteria for protecting health and safety.

We are not considering enhanced PT for cytology at this time but are instead proposing different remedial actions a laboratory failing PT in cytology would have to take to remain approved or licensed. See "Remedial actions for cytology" below.

The revised regulations would establish an evaluation system based on successful participation for each testing event or shipment of PT at approximately quarterly intervals. Under current Medicare practice we disapprove a facility if three out of four shipment scores are unsatisfactory. Currently, if a laboratory has three unsatisfactory shipments out of four, it takes over a year to initiate a termination. Under the proposed revision we could decrease this time interval to as short as two months if the laboratory does not enroll in enhanced PT. (The PT program has one month to notify us of PT results; we notify the laboratory of its loss of approval within one month.)

The proposal for revision of the PT requirements also would include a provision for action against a laboratory when there is unsatisfactory performance for the same single analyte in any PT shipment or testing event or when there is unsatisfactory performance for one of two challenges for the same analyte in each of two consecutive shipments or testing events (or combination). We would terminate approval of the entire specialty or subspecialty in which the failed analyte is categorized unless the laboratory requests enrollment in the enhanced PT program, since under the Medicare program there is no mechanism for taking action to deny payment for a single test.

Since the tests that we have selected for participation in the PT program are critical to patient health and are representative of the universe of tests frequently performed in the specialty or subspecialty, poor performance in even one test, if uncorrected, is indicative of more widespread problems in testing, management and proper quality assurance procedures. If a laboratory performs unsatisfactorily on the individual analytes selected for PT and the same analytes in the enhanced PT program, we would take termination action against the laboratory within 15 days of notification by the PT program to protect the health and safety of the individuals being tested.

We would also institute an overall PT evaluation by specialty in chemistry, immunology and microbiology. Our objective is to assess overall performance to the extent possible. Thus, poor performance in one subspecialty would result in the laboratory failing the specialty as well and the laboratory would be unable to obtain approval for any of the other subspecialties in the same category. The laboratory would therefore have an additional incentive to participate successfully in PT.

Laboratory Requirements

• General

In new § 493.21, Condition: Enrollment and testing of samples, we would have two standards: (1) If a PT program has been approved under new Subpart D for a specialty or subspecialty for which a laboratory seeks or has approval or licensure, a laboratory must enroll in an approved PT program for each specialty and subspecialty for which it seeks approval (Medicare or Medicaid) or licensure (CLIA); and (2) the laboratory must test or examine the PT samples in the laboratory's routine manner.

This section would require the laboratory to notify HHS of the PT program it has chosen; it would be able to designate no more than one PT program per specialty (in specialties without subspecialties) or subspecialty for the purposes of meeting the PT enrollment requirements. A laboratory could change its selection of PT programs after four quarterly shipments but would have to notify us. The laboratory would have to agree to allow the PT program to release any data to us that we need to evaluate the laboratory's performance.

Section 493.21 would contain a standard concerning how the laboratory is to run the PT samples it receives from the PT program. The laboratory would have to run the samples with its regular work and by personnel who ordinarily perform the laboratory's testing; it could not run tests in replicate unless it usually does so; and it could not send the samples to another laboratory for analysis.

In § 493.22, Condition: Successful participation, a laboratory that does not successfully participate in PT for a given specialty and subspecialty for which it seeks approval for Medicare or Medicaid participation or licensure under CLIA may request enrollment in an enhanced PT program to prevent immediate termination of approval or institution of license revocation proceedings for the failure specialty or subspecialty. If we institute an enhanced PT program, good laboratories would not be penalized for a single PT failure since the laboratory would be afforded the opportunity to demonstrate sustained successful PT performance through enrollment in the enhanced PT program. The enhanced PT program would identify marginal and poorly performing laboratories (those that cannot demonstrate sustained successful performance) for expeditious adverse action.

In § 493.24, Reinstatement after failure to participate successfully, we propose that a laboratory failing PT in any specialty or subspecialty must demonstrate successful performance for three consecutive shipments or testing events (or combination) of enhanced PT in that failed specialty or subspecialty before it may discontinue enhanced PT, or, if it has been terminated, before it can be reinstated in the specialty or subspecialty.

When a laboratory performs poorly over an extended period of time, it should not be allowed back into the program until it has demonstrated its ability to perform successfully for a sufficient length of time to assure that it has not made just a temporary improvement in its testing performance. Therefore, we determined that approval for the failed specialty or subspecialty would be terminated for a

period of no less than six months. Reinstatement of approval in the specialty or subspecialty that had been the subject of an adverse action would not be considered until the laboratory has demonstrated successful performance over three consecutive enhanced PT shipments or testing events (or combination). We are extending the successful performance period for reinstatement from two shipments to three shipments or testing events to assure that the laboratory demonstrates sustained improvement.

• Proficiency Testing by Specialty and Subspecialty

+ General

Sections 493.31 through 493.63 would contain the criteria for acceptable performance a laboratory would have to meet to participate successfully in a PT program for each specialty and subspecialty. The specialties and subspecialties named in these proposed regulations would be microbiology (bacteriology, mycobacteriology, mycology, and parasitology), diagnostic immunology (syphilis serology and general immunology), chemistry (routine chemistry, endocrinology, and toxicology), hematology, pathology (including cytology for gynecologic examinations) and immunohematology.

As stated earlier, PT would consist of four annual shipments from the PT program for each specialty and subspecialty. In addition, we are considering conducting onsite PT, through the State survey agencies. (All cytology PT might be conducted onsite; see proposal below.)

Whenever possible, we determined a composite performance score for specialties and subspecialties of quantitative testing after evaluating historical accreditation program PT performance data from 1986. We consider a grade of 80% for an overall specialty or subspecialty of testing to be a reasonable, achievable level of performance. In immunohematology in which even one error may have serious and immediate consequences, we would require a performance level of 100% for subspecialties of testing.

The 80% composite score for specialties and subspecialties of service together with the evaluation of analyte performance, which focuses on identifying analyte testing problems, would provide the basis for assessing laboratory performance to permit detection of laboratories whose results are consistently marginal or worse, while not penalizing a laboratory that rarely produces marginal results. The unique feature of including the enhanced PT program, although not currently offered by PT programs, would provide an improved measure for separating a rare single laboratory error from a true laboratory performance problem ensuring that poor performers are recognized as such and that good performers retain Medicare approval or CLIA licensure (or both).

After we have implemented the PT program and collected and examined PT performance data, we anticipate that additional refinements in the PT program grading criteria would be necessary.

Whenever changes are necessary, we would expedite the rulemaking process to ensure the most rapid implementation in order to have dynamic requirements to respond timely to new testing procedures and methodologies as well as refinements in performance and evaluation criteria.

We would publish a notice in the **Federal Register** before revising PT program requirements.

+ Cytology

While we recognize especially the importance of developing a national consistent standard for a PT program for cytology, we also acknowledge the complexity and uniqueness of this area of laboratory testing. Cytology PT differs from most other PT programs because (1) cytology testing remains a manual process that is totally dependent upon the judgment of the person viewing the specimen; (2) a cytology PT program tests the accuracy of each individual engaged in the examination of cytologic preparations more than the overall performance of the laboratory; and (3) there is a substantial degree of difficulty in obtaining cytology specimens for PT.

Currently, most PT programs do not test cytology services. As a result, we do not have as much information as in other areas from which to assess cytology PT. We are therefore proposing three options (onsite testing, mailed shipments of specimens, and a combination) for interested parties to comment upon. All options include ranges for accuracy rates, number of challenges per testing event and number of testing events per year. We would appreciate comments concerning which accuracy rate in each range commenters prefer (and why) as well as which PT option is preferred and why.

We are proposing at this time to require cytological PT only for gynecologic examinations; thus we are proposing standards at this time for a national PT program in cytology for Pap smears only. We are proposing that Cytology: Gynecologic examinations be a subspecialty under the specialty of pathology. Other tests, such as fine needle aspiration, breast fluid, etc., which are non-gynecologic cytology tests, constitute a small portion of cytology tests, and all cases are ultimately reviewed by qualified pathologists. Therefore, we are not proposing standards for a PT program for non-gynecological cytology testing at this time.

We considered numerous approaches to cytology PT, some of which were found to be impractical as the basis for a national standard for PT in cytology. For example, we considered "blind" PT as one approach. In blind PT, samples are submitted through cooperative clients (physicians) to the laboratory. These slides are theoretically undetected as PT test cases because they resemble routine specimens received by the laboratory. We decided this approach would not be practical to use on a national basis because of the difficulty in obtaining enough specimens as well as the cooperation of physicians to distribute PT samples to the laboratories and assuring that these specimens are, in actuality, not easily identified as PT challenges. While we agree that a true "blind" PT program is a valuable methodology, we could not implement such a complex program on a national basis because of the logistics. Therefore, we propose to include the "blind" submittal of known specimens as an option for the laboratory to use as part of its own internal quality assurance program to evaluate cytotechnologist performance and to document the quality of laboratory performance (See Subpart H—Quality Assurance).

We also considered a retrospective PT program approach and likewise found it to be impractical to implement on a large scale. This system involves the selection of previously screened slides for screening by either exchanging slides with another laboratory as a "round robin" scheme, rescreening one laboratory's cytology cases by a reference laboratory with recognized expertise in cytology, or rescreening by a panel of cytology experts in a State. The slides selected would have to be representative of the laboratory's workload and would have to include some abnormal specimens. Since managing a retrospective program would be highly labor-intensive and complicated to conduct and maintain, and criteria do not exist for selecting the laboratories which would have final responsibility for determining correctness of diagnosis, we have also decided to propose including the retrospective PT approach as an option

for the laboratory to use as part of its own quality assurance program. Retrospective PT may be used to evaluate individual cytotechnologist performance and overall laboratory performance and as one of several approaches for remedial action if any cytotechnologists fail the national standards for the cytology PT program ultimately selected.

– Options

We would like to develop a program that will be feasible and practical and that will serve as a strong measure of performance evaluation in cytology testing. We are seeking public comment on three possible approaches to cytology PT.

1. The first approach to cytology PT standards about which we seek comment involves an "onsite" methodology. This system involves taking actual PT slides to the laboratory or testing the individuals engaged in examination of cytologic preparations at an offsite testing center and directly observing the individuals as they review the slides. This system, to be conducted by the State survey agency, would allow us to test all individuals in the laboratory who are involved in the examination of slides and has the advantage of permitting immediate feedback if a performance problem is detected.

Disadvantages are: slides are pre-stained and may differ from the laboratory's usual staining quality; positives may sometimes be present in greater frequency than would ordinarily be found in the laboratory's regular screening workload; and a set time limit for review per slide, imposed to expedite the testing process, may be discomforting to some examinees and may not reflect the conditions under which cytotechnologists routinely examine slides. In addition, though the onsite PT methodology is practical as a standard for a national PT program it is expensive to operate, especially in terms of the personnel needed to transport the slides and conduct the PT program.

We are proposing that satisfactory performance for each individual would be based on a 80 to 100 percent correct response on each PT survey and over the span of three testing events. Successful performance for the laboratory, which includes all individuals engaged in slide examination, would also be based on 80 to 100 percent correct responses on each testing event. A correct response would be an 80 percent or greater agreement of participants. We are interested in receiving comments regarding instances when there is not agreement of a minimum 80% of the response or when a graded response may be close to the consensus but not exact.

2. The second approach to cytology PT standards about which we seek comment involves mailed specimens. This system involves mailing sets of slides or photographs or interactive video discs that represent a spectrum of possible cytologic findings. Each individual in the laboratory who is engaged in slide examination analyzes the set of samples and reports his or her results in a standardized format.

Problems with this approach include slide breakage in transit, poor reproducibility of colors in photographs and variations in slide staining. However, video discs may offer solutions to these problems. Overall, this option would tend to reflect the best rather than the usual performance by individual and laboratory.

We are proposing the same scoring system for this option as for the "onsite" option, but hope to receive comments on more stringent grading criteria.

3. The third approach is simply a combination of onsite and mailed cytology PT. We are seeking detailed comments on how we could set standards for a cytology PT program that would contain features of both onsite and mailed PT.

+ Remedial Actions for Cytology (Gynecologic Preparations Only)

The principal purpose of any PT program is to identify areas of performance that need correction or improvement and to ensure that good performance is maintained over time. Because correct cytology performance involves the skill and judgment of individuals viewing slide preparations (as opposed to a machine making correct analyses of fluids, for example) and because the results are especially critical to diagnosis and treatment, we are proposing different remedial actions that would be taken when individuals fail the cytology PT program.

We are proposing remedial actions applicable to individuals who do not demonstrate satisfactory performance and penalties applicable to laboratories that fail to maintain overall successful performance in their cytology testing programs. The remedial actions would be the same for any of the cytology PT options: mailed specimens, onsite testing and a combination of the two.

We are inviting comments on this proposal, especially in terms of ways we can improve the process of remedial actions when individuals fail the PT program.

1. Remedial Actions Concerning Individuals

The first time an individual fails any part of a cytology PT survey, the laboratory would have to provide the individual with immediate remedial training and education in the area of the failure and a review in those areas passed. If the individual's score is 50 percent or less in each of two testing events, we would require a more stringent form of remedial action up to prohibiting the individual from reporting negative slides until the individual has been retrained and demonstrates necessary accuracy by scoring 100 percent on two consecutive PT testing events. If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any PT testing event, all individuals engaged in the examination of slides would have to undergo additional training and education in addition to that required in Subpart G (personnel requirements) *and* the laboratory would have to participate in a retrospective PT program until the laboratory achieves an overall score of 95 percent or more correct responses over three subsequent consecutive PT testing events. The 95 percent score for the laboratory represents the composite score of all cytotechnologists

2. Fiscal Penalties for Laboratories

We are proposing that if the laboratory fails to take required remedial actions (as described above) when an individual fails the PT program or if either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail two or more of PT testing events, we would terminate the laboratory's Medicare approval for the subspecialty of gynecologic examinations, revoke its CLIA licensure, or both as applicable.

Subpart D—Proficiency Testing Programs

A new Subpart D would contain the requirements a PT program would have to meet before a laboratory could use it to meet the PT requirements of Subpart C. Subpart D would indicate for each specialty and subspecialty (a) program content and frequency of challenge; (b) the number of challenges per quarter; and (c) how to evaluate analytes or test performance.

Before 1986 CDC operated a PT program for CLIA licensed laboratories. The revised regulations would not include a federally-operated PT program. We would depend on private-sector and State-operated programs to provide the PT. We would evaluate the

programs against the standards established in these regulations in Subpart D.

Ideally, the criteria for acceptable laboratory performance should be based on clinical usefulness of test results; however, there are no generally agreed upon medical usefulness criteria. In the absence of medical criteria for acceptable performance, we would define acceptable performance using fixed criteria, when appropriate, and statistical limits elsewhere. This approach corresponds to current laboratory performance evaluations based on the state of the practice. We would use a three standard deviation limit to identify laboratories requiring regulatory intervention; this is similar to laboratory internal quality control systems that currently use a three standard deviation limit to identify serious problems requiring remedial action. We are interested, however, in receiving comments on the marginal effectiveness of using two standard deviations for any analyte.

Basically, programs wishing to qualify as a PT program under these regulations would have to offer a minimum of at least two challenges per quarter for each test or analyte for the subspecialities included in the specialities of diagnostic immunology, chemistry, hematology, and immunohematology and six challenges per quarter for the specialty of microbiology, which includes the subspecialities of bacteriology, mycology, mycobacteriology and parasitology. For the enhanced PT program, we would require six challenges per shipment for each test or analyte for the subspecialties, include in the specialties of diagnostic immunology, chemistry, hematology and immunohematology and twelve challenges per shipment for the specialty of microbiology. Where appropriate, the regulations would describe the different types of services a laboratory could perform for that specialty or subspecialty. The laboratory would be expected to perform tests on PT samples to the same extent that testing is performed on patient samples.

Subpart D would describe criteria for acceptable performance. The criteria for grading was developed through an evaluation of the current criteria in use by States and private sector programs and an evaluation of data CDC had for the performance characteristics of laboratories.

A PT program would evaluate a laboratory in a manner that reflects the scope and level of services the laboratory offers as oppposed to the current CLIA PT requirements that specify that laboratories enroll only in programs of fixed size, regardless of their scope of services.

After the PT program has been in operation for two years we would consider revisions to the program based on the performance of laboratories. We would solicit comments from all concerned groups regarding the need to modify the PT program requirements. Changes in the PT program might be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete or well-performed tests, or to improve the evaluation scheme based on new data describing actual distributions of test scores, and the relationship of test errors to physician practices and patient outcomes. When we have decided to include new challenges or evaluation criteria in future PT, we would expect these changes to be provided by approved PT programs within two years of our approval and announcement. We would review the standards for PT on a regular basis and make such changes as are necessary and provide notice of these changes to all affected.

The requirements for program content and number of challenges per quarter would be implemented through an expedited rulemaking process to enable us to drop or add tests timely to reflect current technologies.

- Cytology (Gynecologic Examinations)

As noted above in the discussion concerning Subpart C, we are proposing three options for cytology. For all options, we are proposing one to four PT testing events per year, with five to 12 slide preparations per individual per testing event. We are proposing that the type of challenges include "normals," infectious agents, benign reactive processes, pre-malignant processes, and malignant processes.

We would require the program to provide previously "referenced" slides: "positive" slides would have been confirmed by tissue biopsy and "negative" slides would have been confirmed by 95 percent consensus agreement.

Subpart E—Patient test management

We would establish a new subpart E and a new condition—§ 493.201, Condition—Patient test management. This condition would provide a uniform set of requirements for all laboratories (CLIA and Medicare) for specimen submission and requisition and would more clearly define the actual records that must be kept and why they are required.

The proposed requirement would be based on current Medicare requirements dealing with clinical laboratory management (§§ 405.1316 (d), (e), (f), and (g)), quality control (405.1317(a)(7)), and CLIA laboratory requirements dealing with reports and records (§§ 74.53 and 74.54).

The existing requirements would be modified to allow for electronic requisition of laboratory tests to keep pace with modern technolgy and the advances that allow for computer systems to interact directly. We expect these computer systems to be provided with security systems and "keys" to assure that only authorized persons can order tests. In addition, we would add to the specimen requisition requirement for cytology examinations, in § 493.201(b)(5), the provision that pertinent clinical information necessary for accurate diagnosis of cytology specimens must be provided to the laboratory, including for Pap smear testing, an indication of whether the patient is at risk for developing cervical cancer or its precursors.

The existing requirement for retention of reports in pathology would be increased from two years to ten years because a two-year time period is insufficient to assure adequate patient tracking for cancer screening, diagnosis and follow up.

The proposed standard on specimen records would indicate that the critical requirement is for the laboratory to have a system that ensures identification of the specimen being treated through all stages of testing. The laboratory would not be required to maintain the name of patients as long as there is some mechanism in place to assure specimen identification and enable results to be reported to the person ordering or requiring the test. The regulations would require patient confidentially to be maintained but still provide for the correct identification and reporting of the specimen results. However, the Medicare carriers and intermediaries would continue to be able to require names or other identifiers in assuring payment of a claim.

The proposed rule would remove the restrictive standards under Medicare that only persons authorized under the Medicare program to request or receive results could obtain such results even if they were not seeking Medicare payment. Several State laws permit individuals to order and obtain their own test results and this conflicts with the Medicare regulations. The proposed modification would allow flexibility for those tests performed on non-Medicare beneficiaries, provided State laws have no restrictions on who can order tests.

The laboratory would have to determine or verify normal ranges used for reporting patient test results through validation studies required in § 493.235.

The new section also would require the laboratory to make available to clients, information on factors that may affect the interpretation of test results (if they are known), including interferences, detection limits, sensitivities, specificity, accuracy, precision and validity of these test mesaurements. In addition, laboratories would be required to notify clients whenever changes occur in testing methodology that affects test results or interpretation of test results. This would enable the individual requesting and receiving test results to evaluate the laboratory's quality and any limitations on the information they receive. This is the type of information that any laboratory should know in order to perform and report tests and is obtained through its quality control and quality assurance program and, in many instances, is available from the manufacturers of the test systems.

We would add a requirement on test referral (standard (e)) to indicate that each laboratory performing tests either directly or on referral must have its name and other identifier on the report to the individual requesting or receiving test results so that the individual receiving the report will know which laboratory actually performed the test. The current regulations are not clear on whether all testing facilities must be indicated on the report so that it is possible that multiple referrals do not include the name of all testing facilities on the report.

Under the proposed requirements the laboratory must maintain a legally reproduced copy, rather than an exact duplicate as is required by current § 405.1316(g), to make these regulations consistent with other Medicare recordkeeping requirements and to allow for the use of new technologies in the storage and transmittal of data.

Subpart F—Quality Control

Existing quality control requirements are in § 405.1317 and Part 74, Subpart C. We would revise and move them to Part 493 and form separate conditions. New § 493.221, Condition; General quality control, would be applicable to all the specialities and subspecialties. New § 493.241 would specify that failure to meet the condition unique to a particular specialty or subspecialty would result in the loss of Medicare approval or CLIA licensure (or both) of that specialty or subspecialty.

The revision of these regulations would reflect changes in technology as well as clarify the specific requirements for each standard. The clarifications would reflect the current Medicare guidelines and would more explicitly inform the laboratories of their responsibilities under the regulations.

1. General Quality Control (§ 493.221)

The general quality control regulations in §§405.1317(a) and 74.20 would be combined into one uniform condition as § 493.221. We have made the general quality control a condition to indicate its importance. We would divide the requirements in current §§ 405.1317(a)(1) and 74.20(a) into several standards in new sections in order to define more clearly what the requirements are and to separate the various requirements in the current regulatory factor into several distinct and related categories so that each is equal in importance.

New § 493.221 would elaborate on what such items as "adequacy of equipment" and "test systems" consist of beyond descriptions in current § 405.1317(a).

We would add a requirement that the laboratory specify the procedure the staff is to follow in case quality control results or patterns do not follow the expected patterns established by the laboratory. There would also be procedures for reporting patient results when test method limitations are exceeded. These are critical elements in the performance and reporting of test results and are necessary to assure that accurate and reliable results are obtained and reported. Since these factors are essential, the laboratory staff should be aware of these procedures and the quality assurance program (described in § 493.451) would assure that these procedures are in place and followed.

We would also require the laboratory to verify the validity of its procedures. This requirement is contained in the current regulations in § 405.1317(a)(1) but we would spell out in detail what constitutes the validation of each test method.

We would also add a requirement that the laboratory have a mechanism in place to verify the accuracy and reliability of data management and reporting systems to assure that the data is accurately analyzed, processed and reported. This is a critical requirement since no matter how accurate and precise a method is, data not analyzed properly or reported correctly could result in incorrect patient diagnosis or treatment. We also would revise the regulations to indicate the importance of detecting errors in test results and reporting and promptly correcting these errors since the detection of the errors is a critical element in assuring accurate and reliable test results.

We would add a requirement under the general quality control condition for the frequency of running quality control materials. The frequencies are currently indicated in § 405.1317(b). We would place the requirement in the general section, rather than with each specialty, to provide flexibility and eliminate the arbitrary classification of procedures to match the placement of certain quality control requirements in a specialty area. This revision would also reflect the changes in laboratory technology. We would also add provisions to these regulations to allow for lesser frequencies as changes in technology lead to methodological improvements.

Our new requirements on equipment maintenance and function checks would indicate that the laboratory must define its own program based on the manufacturer's instructions. This is a revision from current requirements at § 405.1317(a). The laboratory would have to demonstrate that its procedures produce accurate and reliable test results. We have decided not to specify detailed requirements for these procedures in the regulations; we would allow flexibility and the utilization of the manufacturer's protocols. We are seeking comment on the appropriateness of relying on manufacturers' protocols. The new requirement would also provide for technological change. We would not specify performance characteristics but would specify that the laboratory must determine its own performance characteristics based on validation studies and must adhere to these established performance characteristics. We would require the laboratory to make the performance characteristics available upon request to individuals ordering and receiving test results. The quality assurance subpart, Subpart H, would require the laboratory to adhere to its quality assurance program and established protocols.

We would define validation of methods and remedial actions and specifically indicate what is required. The requirements would match our current guidelines and would better inform the laboratories of their responsibilities.

Whenever possible we would place similar requirements in the general section that apply to more than one specialty area. For example, we would combine the references on recalibration from the sections on hematology, chemistry, and radiobioassay, into a general section. In addition, because of

the advent of certain new technologies, we would no longer require daily instrument verifications separate from quality control checks. Rather, we would specify the basis and frequency for performing instrument checks, which correspond to our current guidelines in this area.

We would also define the timeframes in which control samples must be tested with patient specimens to assure accurate results. The current requirement for including controls with each test run of patient specimens is clarified in these proposed requirements. We would include alternatives to the use of two standards or two controls since these materials are not always available.

2. Specific Quality Control Requirements (§ 493.243–§ 493.315)

We would transfer the contents of current §405.1317(b), Standard; Quality control system methodologies, to this new subpart and create for each specialty a new condition and for each subspecialty new standard. A laboratory must meet the conditions corresponding to the specialties and the standards corresponding to the subspecialities for which it wishes to be approved or licensed. These conditions and standards would appear in §§ 493.243 through 493.315. Any laboratory found out of compliance with a condition for a specialty or standard for a specialty would not become or remain approved or licensed for that specialty or subspecialty.

In § 493.243 we would include revised microbiology requirements to indicate that the frequency of performing controls has been changed to reflect standards for current technology and state of the art developed by HCFA and CDC working with the National Committee for Clinical Laboratory Standards (NCCLS). The NCCLS is a national voluntary standards organization consisting of representatives including manufacturer, laboratories and Federal and State regulatory agencies that develop and publish guidelines and standards for laboratories. The NCCLS standards for microbiology media quality control and susceptibility testing quality control have been implemented through the HCFA State Operations Manual for Survey and Certification and have been in place for approximately two years with no alteration in the quality of testing observed. The regulations would be modified to reflect these changes. The laboratory community has estimated that the implementation of these changes has saved several million dollars per year in quality control costs with no adverse effects on microbiology testing.

HHS is continuing to work with NCCLS and other groups to develop beneficial and cost effective standards. The standards would be modified as data become available and can be assessed to justify additional changes.

We would also revise (in § 493.255) the serology (diagnostic immunology) requirements to reflect the fact that the CDC no longer publishes a reference manual on tests for syphilis serology. We would require the laboratories to follow the manufacturers' instructions. We intend to revise this section at a later date if the CDC revises its manual. We would also add the hepatitis testing and human immunodeficiency virus test requirements for facilities performing this testing on blood and blood products used for transfusions. We would consolidate the requirements for serologic testing of the blood in this section since they relate to this area and we would not require reference laboratories performing this testing for blood banks to obtain additional certification in immunohematology. The requirements would coincide with the PT categories being developed for these regulations.

We would revise the chemistry regulations (in § 493.261) by adding requirements for three subspecialty areas: routine chemistry, endocrinology and toxicology. All three areas, at this time, would have to meet the applicable general quality control requirements and, for routine chemistry, laboratories performing blood gases, urinalysis, or both, would have to meet the subspecialty requirements.

The revised hematology section (§ 493.267) would reflect the fact that most of the requirements have been moved to the general quality control section. We would not retain current provisions for allowing an exemption from running specimens in duplicate for coagulation tests such as prothrombin time since there is no scientific evidence at this time available to justify retaining the current provisions. When criteria are available they would be published.

The requirements for cytology would be revised to assure that the laboratory has a quality control program to detect errors and assure accurate laboratory diagnosis. We would specify that gynecologic preparations must be stained using the Papanicolaou stain because it is the stain of choice for demonstrating abnormal cells. We would impose requirements for staining procedures to protect slide preparations from cross-contamination from other specimens.

We are seeking comments on whether we should establish workload requirements for individuals examining cytology slides. Because of the complexity and difficulty of establishing regulations in this area, we have decided not to include a specific provision in the proposed regulation. However, depending upon the comments, we may do so in the final regulation. Our deliberations on establishing workload requirements resulted in consideration of several options. We seek specific comments on each option as well as the effectiveness and workability of any limitation of this kind.

One option we are considering is setting a limit on the number of slides that may be reviewed by each cytotechnologist in a day. Specifically, we could require that each full-time cytotechnologist who reviews only gynecologic slides may review no more than from 80 to 100 slides in each 8 hour workday of each twenty-four hour period. For part-time cytotechnololgists, we would require the number of slides that may be reviewed to be prorated using the same 80 to 100 slide limit per eight hour workday. If the full-time cytotechnologist performs duties other than slide examination, we would require the 80 to 100 slide limit to be prorated to correlate with the actual time spent in slide examinations using the formula:

$$\frac{\text{Hours worked on gynecologic slides}}{\text{Total hours worked}} \times \text{(80 to 100 slide limit)}$$

With respect to the 80 to 100 slide limit, we are identifying what we believe to be a range of acceptable workloads and are interested in comments about the precise number that we should select, or if we should retain a range, leaving the choice of the specific number of slides for each cytotechnologist to review up to the technical supervisor.

Under this option we would require that each full-time cytotechnololgist who reviews only nongynecologic slides may review no more than 30 slides in each 8 hour workday or each twenty-four hour period. If the cytotechnologist is part-time or performs duties other than slide examination, we would require the 30 slide limit to be prorated to correlate with the actual time spent in slide examination using the formula:

$$\frac{\text{Hours worked on nongynecologic slides}}{\text{Total hours worked}} \times 30$$

We would also require that the number of slides of both gynecologic and nongynecologic preparations a full-time cytotechnologist may examine be prorated by multiplying the ratio of hours worked on a given type of slide to the total number hours worked by the selected value in the 80 to 100 range for gynecological slides and 30 for nongynecological slides. (See above paragraphs for formulas.)

A second option we are considering is setting an annual volume limit based on reasonable staffing patterns for cytology laboratories. For example, we could set a limit of 12,000 gynecology cases with 2 slides per case as the maximum for each full-time cytotechnologist who reviews only gynecologic slides and a limit of 3,000 cases for each full-time cytotechnologist who reveiws only nongynecologic slides. Calculations of annual volume for cytotechnologists who are not engaged in examining slides on a full-time basis would be prorated as previously described in the first option.

An alternative that we also are considering to specifying a Federal workload limitation for cytotechnologists is placing with the technical supervisor responsibility for determining the number of slides that can be reviewed competently and accurately by each full-time cytotechnologist in an eight hour day or for part-time cytotechnologists in a lesser time period. The technical supervisor would document the competency of each cytotechnologist and would base the individual workload of each cytotechnologist on assessments of the accuracy of diagnosis for each cytotechnologist at a particular workload rate. We seek comments on this alternative proposal particularly on whether it is feasible for a technical supervisor to determine workload limits based on accuracy assessments.

Finally, we are interested in systematic studies that demonstrate a link between quality and the number of slides examined per day, and whether there is an optimum relationship. We also seek comments on whether such a requirement would necessitate record systems and workload supervision so complex that it would interfer with laboratory performance; whether changes in technology (e.g., computer assisted imaging) would soon make any such limitation counter productive; and whether proficiency testing would render such a limitation unnecessary.

We would revise our current requirements for rescreening of gynecologic or Pap smears interpreted to be negative from our current requirement of a ten percent random sample to either a ten percent rescreen of all negative cases screened by each cytotechnologist or a rescreen of all cases from women who are at risk for developing cervical cancer or its precursors. We would strengthen our requirements for rescreening in response to many comments that our current rescreening requirement is ineffective in detecting false-negative cases and to improve the quality of slide review. We would specify that the laboratory must complete the rescreening before it issues final reports in order to detect and correct any false-negative results in a timely manner. Also, the laboratory would not have to report Pap smear examinations immediately except in cases of viral infections in pregnant patients, dysplasia or abnormal results.

The proposed standards for correlating abnormal Pap smear findings with tissue biopsy reports and for retrospectively reviewing previous cytology results whenever abnormal results are identified are the best approaches to quality control in cytology. However, many laboratories do not have access to tissue biopsy reports and also may not have slides from previous cytology cases; therefore, these requirements, although preferred, may have limited applicability.

We are proposing that laboratories calculate annual data reflecting volume of cases processed by specimen type, number of cases by diagnosis, error rates and number of unsatisfactory specimens in order to develop a statistical approach to evaluate laboratory performance. Evaluating cytotechnologist case diagnosis with overall laboratory performance by diagnosis is an approach to determining outlier performance and focusing case reviews and interaction between cytotechnologists and technical supervisors to improve slide examination performance.

We would specify information that must be on the laboratory report to assure that the individual ordering the cytology exmaination has all of the facts needed to interpret the results reported. The importance of cytology testing and the significance of the examination results makes it critical for laboratories to provide all specimen findings including follow up recommendations, if indicated.

We are increasing our requirements for retention of slides and reports to assure that laboratories correlate previous diagnosis with current findings.

The requirements for histocompatibility testing (§ 493.277) are the same as those that already apply to Medicare laboratories but would now also apply to CLIA laboratories. We would update technical requirements now in Medicare regulations and include the explicit requirements for which HLA antigens are to be identified. We would not retain certain frequency checks for the components of the serum trays found in current regulations because we now believe the requirements are overly burdensome and are no longer necessary to assure quality. We would also make the requirements more explicit with regard to what is required under each section of the regulation. These changes would reflect the current guidelines for the practice of histocompatibility.

We would also consolidate all the requirements for histocompatibility testing into one section. Previously, the requirements were divided between a section on end-stage renal disease and the independent laboratory general quality control requirements. We would move these to one location in order to clarify the exact nature of the requirements and to make the requirements more readily accessible to those seeking requirements for histocompatibility testing. We would also make these requirements applicable to other areas currently mentioned in the regulations, such as liver transplantation and bone marrow transplantation as well as other transplantation areas. We therefore propose to move material from § 405.2171 and include it in this section.

The new section would also provide uniform standards for Medicare and CLIA laboratories for histocompatibility testing. This requirement would impose no additional burden on laboratories currently in both programs but would provide consistency in the regulations and requirements since CLIA histocompatibility testing laboratories are currently classified in serology and Medicare laboratories are classified in a separate category for histocompatibility.

In new § 493.281 we propose to revise the immunohematology requirements now in § 74.25 to make them consistent with the Medicare requirements. The CLIA requirements were not revised at the time Medicare adopted the FDA standards in 1981. We propose to adopt these same standards for CLIA laboratories. We would also cross-refer this standard to all of 21 CFR Part 640 to provide total consistency between Medicare and FDA regulations and to assure that any changes in the FDA regulations are reflected in the Medicare regulations. We also propose to add a requirement that laboratories collecting, processing and transfusing blood and blood products meet the requirements in 21 CFR Part 606 to make the Medicare regulations consistent with the FDA regulations on this subject. The need to refer to Part 606 was inadvertently overlooked during the promulgation of the Medicare regulations in 1981. The revision would clarify the precise requirements that are expected of the facilities.

We would also add explicit requirements for cytogenetics testing because of the importance of this area in testing for genetic defects and the fact that the existing general quality control requirements do not adequately address this area. In addition, laboratories seeking payment for these services have been classified in the anatomic pathology or serology areas under a less than precise methodology and the anatomic pathology and serology requirements are not applicable to cytogenetics testing. The revisions of the regulations would be based on the standards of the private sector and New York State, which are the only existing models for quality control standards.

We propose to add a condition to quality control on blood banking and transfusion services (§ 493.301) to consolidate all the requirements in the regulations relating to the collection, processing, transfusion and storage of blood and blood products in one section of the regulations. Currently there are requirements relating to blood collection and storage in both the quality control sections of the independent laboratory conditions for coverage and in the hospital conditions of participation. The provisions contained in § 405.1317(b)(4)(ii) are more appropriate to a section on collection and processing than a section on the quality control of the testing performed in blood banks and transfusion services.

The regulations in § 405.1317(b)(4)(ii) were adopted as part of the revision of the requirements under the MOU with FDA. However, the establishment of a new condition on blood banking and transfusion services and the consolidation of these requirements would simplify and clarify the regulations; those subject to the provisions of the regulations would be better able to determine the specific requirements applicable to them.

We have reviewed the causes of fatal transfusion reactions since 1976, based on the files of the FDA and HCFA, and have concluded that the facilities' own internal quality assurance programs are an important segment in preventing transfusion reactions and deaths. Therefore, we would modify the existing regulations that were adopted from 42 CFR 482.27(d) to include the importance of a quality assurance review. This would also be emphasized in the general quality assurance standards (Subpart H). It is our intent for the condition on blood banking and transfusion service to apply to all facilities were these services are offered. Therefore, we would not retain in § 493.303 the hospital-specific language contained in § 482.27(d) and would move the remainder to Subpart F and cross-refer all other applicable regulations to this subpart. Facilities not offering these types of services would not have to comply with these requirements.

We also propose to cross-refer the condition on bloodbanking and transfusion services to all of 21 CFR Part 640 rather than just certain sections, as does § 405.1317(b)(4)(ii), since the broader cross-reference would (1) give greater assurance of quality for the bloodbanking activities, (2) reduce the necessity for revising the regulations whenever FDA adds requirements into these sections and (3) reduce duplicative requirements, policies and procedures between HCFA and FDA.

We would also include the reference to 21 CFR Part 606 in this new condition since it contains the specific FDA recordkeeping requirements for this area. This would reduce the uncertainty of what records must be kept, consolidate recordkeeping requirements for collection, processing, and transfusion into the section where they are applicable, and make the survey of the facility and the citation of specific deficiencies easier for the survey agency.

Subpart G—Personnel Standards

The current Medicare independent laboratory regulations (§§ 405.1312, 405.1313, 405.1314(b) and 405.1315), and CLIA personnel standards (§§ 74.30 through 74.31) contain detailed education and experience requirements for individuals at the director, technical supervisor, general supervisor, technologist and technician level (CLIA does not have a technician level requirement). The Medicare conditions of participation for hospitals (42 CFR Part 482) have specific requirements only for the laboratory director, who has responsibility for determining the qualifications of the supervisory personnel and the individuals performing the tests at the bench. These latter regulations provide the director with the maximum flexibility in the selection and utilization of personnel.

We believe it important to retain technical supervision qualifications for some specialty and subspecialty testing areas currently contained in the regulations. Therefore, qualifications for individuals providing technical supervision of tests in the areas of histopathology, including skin pathology, and oral pathology currently in § 482.27(a)(3)(ii)–(iv) would be moved to § 493.403, as would be the qualifications for individuals supervising transfusion and blood banking services now found at § 482.27(d)(1). In addition, qualifications for individuals providing technical supervision in cytology currently in § 405.1314(b)(9) would be repeated at new § 493.403, as are the qualifications for individuals providing technical

supervision in histocompatibility currently in § 405.1314(b)(13). In order that new § 493.403 contain all qualifications necessary for the range of tests performed, we would also add new requirements for those who supervise cytogenetics testing.

We note that these requirements are new for hosptial-based laboratories. Therefore, we solicit comments on all of the requirements for technical supervision, with specific reference to the need and justification for them, and whether these provisions would, if they were to be applied to physician office or small hospital laboratories, prevent the performance of tests that these laboratories are in fact effectively conducting.

We intend to adopt the same personnel requirements in the new Part 493 for all laboratories that participate in Medicare or Medicaid or are licensed under CLIA. The proposed rule contains the provision required by section 9339(d) of the Omnibus Budget Reconciliation Act of 1986 to accept for Medicare purposes individuals that meet State licensure requirements for laboratory directors. This provision specifies that if a State provides licensing or other standards with respect to the operation of laboratories (including those in hospitals) in the State and establishes qualifications under which an individual may direct a laboratory, title XVIII of the Act may not be construed as authorizing the Secretary of HHS to require other qualifications; this provision was effective January 1, 1987. We are developing a proposed revision to the independent laboratory requirements for Medicare approval, CLIA licensure requirements and hospital-based laboratory rules to incorporate this provision in a separate document.

We would also include a provision to enable individuals who qualify as laboratory directors under current regulations to continue to qualify as such.

We intend to continue to allow for the recognition of private sector certification programs for director level personnel as an alternative mechanism for qualification as is currently contained in §§ 74.30 and 405.1313. This provision reduces the need for the program to evaluate the credentials of individuals who have already been evaluated by a private sector organization approved by HHS and provides recognition for many of the programs in existence.

We would revise the current personnel requirements for the following reasons:

- It is necessary to emphasize the responsibility of the director for assuring the quality of the services of the laboratory and to allow the director the maximum flexibility to choose the personnel required to achieve this goal.
- Changes in technology make it difficult to develop detailed specific standards and revise them as needed to cover the wide variety of instruments, methodology and test systems currently performed and to be performed in the future in laboratories.
- It is more reliable to depend on outcome measures such as quality control, proficiency testing and quality assurance programs, rather than detailed personnel standards, as a mechanism to assure the quality of testing.

Although it is generally believed that degreed individuals are better prepared to assume technical responsibilities to assure quality, there is limited evidence available to correlate the degree level of an individual with the quality of the test results produced.

There have been several studies on the relationship between personnel standards and quality of testing, including one commissioned by the Office of the Assistant Secretary for Planning and Evaluation of the Office of the Secretary of the Department of Health and Human Services, but there are no definitive data to show the nature of the relationship of specific standards to quality of testing. The studies have been applied to limited areas. Although evidence exists of some improvements in performance as a function of credentialing, these studies are limited in scope, and they are not all based on the same assessment techniques. They also do not indicate that inaccurate or medically unacceptable results were produced by any particular type of level of individual.

Our decision to set standards for the director, supervisor and cytotechnologist is based on the model for the current hospital standards with additional requirements for supervisor and cytotechnologist. The hospital laboratory personnel requirements have not resulted in any known adverse effects on patient health and safety in these facilities over the past twenty years. We have heard from some parties that such a model is more relevant in the hospital setting because of the direct oversight by the medical staff. However, the majority of users of laboratory services are physicans and, if the physician is the key to the quality assurance in hospitals, there is no reason to assume that these same physicans will be less concerned when testing is performed in independent laboratories. Supervision of day-to-day testing is necessary to assure accurate and reliable test results. Since the director may not always be present when testing is performed, we would add requirements for laboratory supervision. Moreover, the current cytotechnologist requirements would be maintained because they are essential in assuring the quality of cytology test performance and reporting. We would also require each cytotechnologist to record the number and types of slides screened each day in order to determine compliance with the workload requirements in § 493.271(b).

Proposed rules applicable to the personnel levels below the director and supervisor would provide for maximum flexibility for the director in choosing the laboratory staff, except for cytology where specified personnel qualifications would be required to assure the quality of cytology results. The individuals employed in laboratories would still have to meet State standards, if any exist. This would place responsibility with the States to set specific criteria for personnel to meet local needs. The director would have to ensure that the personnel have the necessary training, experience, continuing education, receive continuous evaluation and monitoring of performance levels and meet any State licensure requirements. The proposed personnel requirements would allow the flexibility to utilize the various private-sector credentialing programs, State licensure programs and private-sector examinations as a guide in selecting individuals for employment purposes.

In proposed § 493.405 we specify laboratory director responsibilities and emphasize the duties required of the laboratory director. The laboratory director would have the overall responsibility for the quality of testing performed by the laboratory and would be responsible for establishing and maintaining a quality assurance program and establishing performance characteristics for the test systems employed by the laboratory. The director would also be responsible for providing evidence that the laboratory can maintain these performance levels: the director would assess factors such as staff performance, quality control results, proficiency testing results, validation of test procedures and methodologies, and assure that the laboratory corrects all problems before reporting test results. In addition, if errors are detected after results are reported, the director would be responsible for providing the necessary

corrected information to the individual requesting or utilizing the test results.

Subpart H—Quality Assurance

In new § 493.451 we would add a quality assurance condition for both the Medicare and CLIA laboratories to require the laboratories to establish and follow protocols that assess the effectiveness of their operations. The new condition would require the laboratory to establish procedures for monitoring the quality of its testing and staff performance and to assure that the laboratory's performance is within established acceptable criteria. This section would add an additional level of quality control and place the burden on the laboratory to accept responsibility for monitoring its own performance as an adjunct to the checks placed on the facility by the regulatory agency. The laboratory would utilize its quality control and PT data and regular staff performance evaluations to monitor and assure the quality of testing and reporting.

The responsibility for establishing and implementing a quality assurance program would be placed on the laboratory director; it would serve as an additional outcome measurement of quality and would assure accurate and reliable test performance and reporting.

The director would also have the responsibility for having a program in place to monitor and control various health and safety hazards from a variety of biological, chemical, environmental and radiological materials or factors, which may affect testing as well as patient and worker safety. This would obviate the need for specifying detailed Federal regulations under Medicare and CLIA such as those now contained in 42 CFR 405.1316, which may not cover all possible contingencies. The new requirement would place responsibility on the laboratory director for setting up and implementing an appropriate program, which would include assuring the compliance with the existing Federal, State, and local laws. This would reduce the need for duplicative standards and allow the facility to develop programs to meet its own needs. This is not meant to imply a lessening of concern for employee health and safety, including protection from various hazards, but the provision would implement a more efficient mechanism for monitoring laboratory safety and employee health.

As part of the quality assurance initiative, we would also encourage laboratories to enroll in PT programs for analytes other than those included in the current grading scheme. For the subspecialty of cytology, laboratories would be able to insert "blind samples" into their workload or exchange slides with another laboratory for retrospective screening and comparison.

In addition to soliciting comments on all the proposed revisions we are requesting comments on alternate mechanisms of quality assurance that can be used in a Federal regulatory program. We anticipate that these regulations will provide the flexibility to take into account future changes but we are reviewing and intend to continue to review the need for further changes and improvements in the regulatory system. We solicit specific suggestions for changes in quality assurance requirements and data to support these changes.

Subpart I—Inspection

We propose to add a condition on inspection of the laboratories, § 493.501, which specifies the requirements a laboratory must meet for inspections and record retention and availability. Provisions concerning inspection are currently in several different sections of the Medicare and CLIA regulations (42 CFR 405.1317(a)(6), 42 CFR 405.1909, and Part 74, Subpart G) and some of them are obsolete.

Under this proposal, we would require the laboratory to demonstrate satisfactory performance on quality control and PT before inspection or approval.

The proposed § 493.501 would allow us to inspect a laboratory during any hours of operation or business, would state that HHS has the right of access to all records required to make a determination of a facility's status and would require that the laboratory make these records available to us for a reasonable period of time during the course of the inspection.

The regulations would extend our authority to require the laboratory to test specimens or undertake quality control actions on patient materials in the laboratory during the inspection to allow us to determine the competency of the personnel and ability of the laboratory to perform tests. In addition to the Subpart C requirement for participation in a mailed PT program, we are considering the development of a methodology for evaluating laboratory performance through onsite PT to enhance the survey process. In 1990, we plan to select a limited number of States in which a random sampling of laboratories would be chosen for the State survey agencies to conduct unannounced onsite PT surveys to evaluate the feasibility of this type of PT.

In addition, under the proposed requirements, DHHS would be able to reinspect the laboratories at such frequencies as are necessary to determine compliance or continued compliance with the regulations. We propose to indicate that denial of access could result in revocation or denial of licensure, termination, or denial of initial approval under Medicare.

Under this proposal the laboratory would also be required to notify us of changes in ownership, direction, location or services so that we can determine the status of the laboratory and its ability to provide reliable and accurate test results. These provisions would not add new requirements but would serve to clarify and unify the existing Medicare and CLIA requirements.

The new § 493.501 would not include a number of the requirements currently in § 405.1909. What constitutes a laboratory test (in § 405.1909(a)) would not be retained since it refers to a section of our regulations deleted earlier. The provisions relating to specialties and subspecialties for licensure and approval that we would retain would be relocated in Subpart F, Quality Control. The content of § 405.1909(b) would be deleted since the date to which it refers has expired. The content of § 405.1909(c), the requirements for successful participation in proficiency testing, would be revised and moved to Subpart C, Participatioin in Proficiency Testing and Subpart D, Proficiency Testing Program.

In addition, the specific requirement in § 405.1909(c) for onsite PT would be revised in Subpart D, Proficiency Testing Programs, to allow us flexibility in determining the mechanism for compliance with PT requirements after a failure and the time period in which we would have to revisit the laboratory. Specifying a specific three-month interval for onsite PT performance or a six-month interval for evaluation of mailed PT samples does not allow sufficient flexibility. The proposed requirements in Subpart C would clarify the conditions for successful and unsuccessful performance and this subpart would specify that HHS may perform whatever follow-up and inspections are required to determine a laboratory's compliance with the standards.

Subpart J—CLIA-Only Requirements

In Subpart J we would place requirements applicable only to laboratories engaged in interstate commerce. For example, the CLIA requirements concerning recognition of accreditation programs are different from those for Medicare laboratories due to differences in the two statutes; CLIA allows HHS more flexibility on the type and scope of information that can be requested.

We also propose to make several modifications in the licensure procedures for laboratories under CLIA. We would revise the regulations to indicate that (1) licenses will be issued or revoked by specialty and subspecialty rather than by individual test procedures in order to achieve uniformity between programs, (2) we are placing increased reliance on overall outcome measures by restructuring of the regulations, and (3) only certain tests are subject to PT because not all tests are currently included in PT programs and some tests, such as chemical screening in urinalysis, may provide such consistent results that continued PT monitoring is not useful.

We would also revise the exemption applicable to certain physician office laboratories that examine specimens on referral so that we would grant exemptions in cases only in which the *total* number of tests performed annually is 100 or fewer rather than granting exemptions for each specialty or subspecialty in which 100 tests or fewer are performed. This would simplify the accounting system for determining if a laboratory requires licensure. We cannot eliminate the test limit since CLIA requires us to provide a low test volume exemption mechanism. We propose to specify that HHS may determine that certain categories or types of tests pose a hazard to public health and no exemption will be granted in these cases. This addition to the regulation would be consistent with the statute and its intent. It will make the Medicare and CLIA regulations more congruent on this matter since the Medicare statute does not have a provision for a low volume exemption.

We are also proposing to add a provision (§ 493.704) that would allow us to issue a notice that a license can continue in effect for another year, rather than reissuing the formal license every year. This would meet the intent of the statute and still permit annual renewal without inordinate paperwork when no changes in licensure status have occurred.

III. Other Revisions Affecting Laboratories

- We propose to revise § 405.1909, Special requirements applicable to independent laboratories, to delete the current paragraphs (b) through (d), as the comparable content would be in Part 493, and to add a definition of "independent laboratory." The term "independent laboratory" is still necessary for payment purposes (i.e., Medicare's supplementary medical insurance program (Part B), rather than hospital insurance program (Part A), pays for independent laboratory services); § 405.1909 discusses independent laboratory services and supplementary medical insurance. We would define an independent laboratory as a facility meeting the requirements of Part 493 that is maintained for the purpose of performing diagnostic laboratory tests. It would be a facility that is not controlled, managed or supervised by a hospital, a hospital's medical staff, or the attending or consulting physician's office. (A physician's office performing tests on referral for the attending or consulting physician would be considered an independent laboratory.)

We would also revise the last sentence in paragraph (a), which currently indicates that diagnostic tests performed by an attending or consulting physician are physician's services rather than clinical laboratory services. Section 1833 (h)(1)(A) and (h)(5)(A) of the Social Security Act, as amended on July 18, 1984, requires clinical laboratory services furnished by any person or entity (other than a provider of services for its inpatients) to be paid for based on a fee schedule. The current rule implies that laboratory services are "physicians' services", which are not subject to a fee schedule. Because we pay for these laboratory services based on a fee schedule, we propose to revise the last sentence so that it no longer calls laboratory services "physician services."

- We would revise the definitions found in current 42 CFR 405.2102, to clarify that histocompatibility testing determines compatibility between a potential organ donor and recipient and not between a donor organ and a recipient. This would be a minor technical amendment to clarify the intent of the regulations.
- We would also revise current § 405.2171(d), Condition: Minimal service requirements for a renal transplantation center, to cross-refer it to the new unified regulations for clinical laboratories, including histocompatibility testing for renal transplantation centers. This would simplify the requirements by placing all related requirements in one section of the regulation. However, we would leave the requirement concerning 24-hour availability of services (§ 405.2171(d)(1)) as it would not apply to other laboratories.
- We would revise current 42 CFR 416.49, Condition for coverage—Laboratory and radiological services, to require laboratories in ambulatory surgical centers to comply with the conditions of coverage of laboratory services in new Part 493 if they perform laboratory testing or perform transfusion of blood and blood products.
- Our revisions to § 482.27 (the condition of participation concerning hospital-based laboratories) would only delete requirements that would be in the new part. We intend to retain the requirements currently in § 482.27(a) (1) and (2) as they would continue to apply only to hospital-based laboratories.

IV. Regulatory Impact Analysis

A. Introduction.

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E. O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospital-based and independent laboratories as small entities. For purposes of this regulation, physician laboratories that perform any tests on referral from other physicians also are small entities. Individuals and states are not included in the definition of a small entity.

In addition, Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a

substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

We do not believe that the provisions of this regulation constitute a major rule. However, because we expect that this regulation could have a significant impact on some laboratories, may affect some personnel employed by laboratories, and may have an effect on some States regarding State requirements, licensure and certification of laboratories, we have performed the following analysis voluntarily.

B. Anticipated Effects

1. Affected Entities

There are approximately 12,000 Federally regulated laboratories located in hospitals and independent settings. These facilities range from large medical centers and corporate-operated independent laboratories to small, independent laboratories and physician's office laboratories.

Although not small entities, we expect States to be affected by some additional administrative burden because they may have to adapt or establish a methodology for assessment of PT requirements and ensure compliance with these requirements. States may have to make more recommendations for termination of Medicare approval if the PT standards are not met.

We expect entities providing PT programs to be affected because of program changes that may be necessary in order to meet the criteria for an approved PT program and additional documentation required to perform in the Federal program. It is estimated that there may be more than 40,000 physician office laboratories that perform more than 5,000 tests annually and that will be subject to Federal standards under current law beginning in 1990. We have not attempted to estimate the effects of the standards in this proposal on physician office laboratories that do not perform referral tests. However, the possibility exists that cetain of these standards may also be found to be applicable to physician office testing. Therefore, we are soliciting comments on the effect on physician office testing of the proposed proficiency testing, quality control, and personnel requirements were these requirements to be applied to physician office laboratories. If there is substantial evidence that any of the standards contained in this proposed rule would so affect the availability of physician office testing that patient care would be adversely affected, that evidence would be appropriate in the context of this rulemaking.

2. Costs/Savings

We expect our standards to be achievable by the majority of laboratories although some may have to incur costs to achieve the required compliance with PT standards. Depending upon the actual costs in upgrading a specific lab to meet PT standards, the charges of that laboratory for its services may rise to offset the costs of improvements. However, we believe that in an area with sufficient competition, including that from physicians' office laboratories, the charges for services will remain stable. Therefore, since charge increases are unlikely, we assume that laboratories will seek to minimize cost increases through increased efficiencies. The regulation provides increased flexibility over existing regulations to permit different approaches to achieving efficiencies.

This proposed regulation would expand Medicare coverage from physician office laboratories receiving 100 or more referrals to those laboratories receiving any referrals. This change may create a slight increase in the number of laboratories requiring Medicare approval.

We expect that some physician office laboratories would seek Medicare approval and thus comply with Medicare requirements to be reimbursed for tests. We also expect that those physician office laboratories that may incur a substantial increase in costs to upgrade to elect to stop doing tests on referral.

There may also be additional increases in the purchases of automated laboratory equipment and computers when laboratory managers make decisions regarding the methodology of achieving the PT standards.

3. Proficiency testing effects

This regulation establishes consistent PT requirements based on data from professional organizations that operate PT programs. We would require specific minimum PT passing scores for each specialty and subspecialty. Currently, passing levels for PT are set by each State and the levels vary. We expect the PT standards to enable us to identify and take consistent action against Medicare and CLIA laboratories whose PT performances are below the range of acceptability achieved by the vast majority of laboratories. A laboratory's poor PT performance would result in a denial of Medicare or Medicaid payment for a failed specialty or subspecialty of testing or in loss of CLIA licensure.

Even though we lack definitive data, we do not expect this regulation to affect most laboratories adversely because most laboratories already have in place PT mechanisms, both for their own benefit and because Medicare requires it. However, laboratories in States with less rigorous proficiency testing program standards than we would require would be the most likely to be adversely affected. We also expect the number of tests for which payment is denied by the Medicare and Medicaid programs for payment purposes to increase for those laboratories that do not improve to our designated performance level.

Some laboratories may incur greater costs to achieve the required PT standards than others because of the costs that would be incurred to improve their quality control activities and quality assurance programs.

If a laboratory's PT performance is determined to be unsuccessful, payment would not be made for tests in the failed specialty or subspecialty. We expect the number of laboratories not receiving payment to increase. However, we also expect the quality of laboratory services to improve as a result of implementation of these standards.

At present, Medicare and CLIA laboratories are not required to participate in PT programs for cytology, because no such program has been established. This regulation would establish a nationwide cytology proficiency testing program. We are proposing certain limits and specifications concerning the developing cytology program. This may mean additional expense for some laboratories that have to participate in a cytology PT program for the first time or incur additional costs in order to perform successfully in the cytology PT program.

4. Quality Control

This proposed regulation includes an update of quality control requirements to account for changes in technology and instrumentation that have occurred in the laboratory field since 1971. Laboratories would be required to implement their own quality assurance programs that they would be expected to follow. As a result of this regulation, laboratory directors should have more flexibility in meeting the requirements and more opportunities to assess laboratory performance and staff competency.

We expect this regulation to improve laboratory testing in terms of the quality of the end result or outcome while removing many of the process requirements that current regulations specify to achieve that outcome. The laboratory would have more discretion over what type of internal controls, methodology, and equipment (such as computerized rather than manual equipment) are necessary to ensure that the required quality control standards are met.

5. Personnel Standards

Our proposed regulations would place less emphasis on formal credentialing for laboratory personnel and focus on the responsibilities of the laboratory personnel. As a result, the administrative burden on the States to document and maintain more detailed personnel records to meet Federal requirements would be reduced. These regulations would require laboratory directors to be responsible for ensuring that the laboratory staff is competent to perform tests. We would specify education and experience requirements for the laboratory director, technical supervision, laboratory supervisor and cytotechnologists. The qualifications of the remainder of the staff are to be determined by the laboratory director and individual State requirements.

6. Conclusion

We believe that these changes would result in clearer, more uniformly applied criteria for determining acceptability of laboratory performance. We expect some laboratories to incur costs to upgrade their performance. We expect these costs to be somewhat offset by savings from removel of detailed process requirements. Overall benefits, in terms of consistent laboratory requirements and improved quality would increase benefits to patients and would more than offset the costs of upgrading and improvements.

We conclude, based on the analysis above, that the proposed rule is not a major rule under Executive Order 12291. Although some laboratories would be adversely effected, we believe that benefits to society will outweigh the adverse effects. We expect most laboratories not to incur substantial costs to comply with our conditions. The Secretary certifies that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Paperwork Reduction Act

Sections 493.21, 493.93, 493.99, 493.101, 493.103, 493.105, 493.201, 493.225, 493.231, 493.233, 493.235, 493.237, 493.240, 493.241, 493.271, 493.273, 493.277, 493.279, 493.315, 493.417, 493.451, 493.501, 493.701, 493.704, 493.708, and 493.710 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the **ADDRESS** section of the preamble.

Section 405.1317 of the current regulations, as recodified into §§ 493.229, 493.251 and 493.253 of the proposed rule, also contains information collection requirements that are subject to the OMB review. These requirements were approved by that Office in August of 1987 in accordance with the Paperwork Reduction Act under OMB approval number 0938–0368.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on rules requesting public comment, we are not able to acknowledge or respond to them individually. A summary of comments and our responses will be included in our final rule.

VII. List of Subjects

42 CFR Part 74

Administrative practice and procedure, health, laboratories, reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 493

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

DERIVATION TABLE FOR 42 CFR PART 493

New section	Old section
493.1	74.2, 405.1310(a).
493.2	74.1, 405.1310.
493.11	405.1311.
493.21	Part 74, Subpart E; 405.1314(a).
493.22	74.42, 405.1314(a).
493.23	New.
493.24	405.1909.
493.25	New.
493.31–493.63.	74.42.
493.91	405.1310(c).
493.93–493.153.	New.
493.201	74.20, 74.53, 74.54, 405.1316(e), (f) and (g), 405.1317(a).
493.221	74.20, 405.1317(a).
493.223	74.20(b), 74.55, 405.1316(b), 405.1317(a).
493.225	74.20(b), 405,1317(a).
493.227	74.20(b), 405.1316(b), 405.1317(a).
493.229	74.20(c), 405.1317(a).
493.231	74.20(d), 74.25, 74.27, 405.1316(a), 405.1317(a).
493.233	74.20(a), 74.55, 405.1317(a) and (b).
493.235	74.20(a), 405.1317(a).
493.237	74.21, 74.22, 74.23, 74.25, 74.27, 405.1317(b).
493.239	74.20(a), 74.23(a), 405.1317(a) and (b).
493.240	74.50, 405.1317(a).
493.241	74.21, 74.22, 74.23, 74.24, 74.25, 74.26, 74.27, 405.1317(b).
493.243	74.21, 405.1317(b).
493.245	74.21(a), 405.1317(b).
493.247	74.21, 405.1317(b).
493.249	74.21(a), 405.1317(b).
493.251	74.21(b), 405.1317(b).
493.253	74.21(c), 405.1317(b).
493.255	74.22, 405.1317(b).
493.257	74.22, 405.1317(b).
493.259	74.22, 405.1317(b).
493.261	74.23, 405.1317(b).
493.263	74.23, 405.1317(b).
493.265	74.23, 405.1317(b).
493.267	74.23, 405.1317(b).
493.269	74.25, 405.1317(b).
493.270	74.26, 405.1317(b).
493.271	74.26(a), 405.1317(b).
493.273	74.26(b), 405.1317(b).
493.274	74.26(b), 405.1317(b).
493.275	74.27, 405.1317(b).
493.277	405.1317(b).
493.279	New.
493.281	74.24, 405.1317(b).
493.301–493.315.	482.27(d).
493.401	74.30, 74.31, 405.1312, 482.27(c).
493.403	74.30, 405.1312(b), 482.27(c), 405.1314(b).
493.405	74.30, 405.1312(a), 482.27(c).
493.407	74.30, 405.1313(b).
493.409	74.30, 405.1313(b).
493.411	405.1313(a).
493.413	405.1317(b).
493.415	405.1317(c).
493.417	New.
493.419	482.27(c).
493.451	New.
493.501	74.56.
493.701	74.2.
493.702	74.1.
493.704	74.10, 74.11.

DERIVATION TABLE FOR 42 CFR PART 493—Continued

New section	Old section
493.706	74.60, 74.61.
493.708	74.47.
493.710	74.46(c).

Title 42 of the Code of Federal Regulations would be amended, as set forth below:

I. Chapter I is amended by removing Part 74 and reserving it as follows:

PART 74—[RESERVED]

II. Chapter IV is amended as set forth below:

PART 405—[AMENDED]

A. Part 405 is amended as follows:

1. Subpart E is amended as follows:

a. The authority citation continues to read as follows:

Authority: Secs. 1102, 1,814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b) 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

b. Paragraph (c) of § 405.556 is revised to read as follows:

§ 405.556 Conditions for payment of charges: Physician laboratory charges.

* * * * *

(c) *Independent laboratory services furnished to hospital inpatients.* Laboratory services furnished to a hospital inpatient by an independent laboratory (as defined in § 405.1909(b) will be reimbursed on a reasonable charge basis under this subpart only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory will be made by the intermediary to the hospital in accordance with Part 413 of this chapter.

2. Subpart K is amended as follows:

a. The authority citation continues to read as follows:

Authority: Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f, 1395k, 1395l, 1395x, 1395z, 1395bb, 1395cc, 1395hh.

b. Section 405.1128 is revised to read as follows:

§ 405.1128 Condition of participation—laboratory and radiologic services.

The skilled nursing facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.

(a) *Standard: Provision for services.*

(1) If the skilled nursing facility furnishes its own x-ray services, it must meet the applicable conditions established for certification of hospitals in § 482.26 of this chapter. If the facility does not provide x-ray services, it makes arrangements to obtain these services from a physician's office, a participating hospital or skilled nursing facility, or a portable x-ray supplier.

(2) If the skilled nursing facility furnishes its own laboratory services, it must meet the applicable conditions established for certification of hospitals and for approval of laboratories found in §§482.27 and Part 493 of this chapter respectively. If the facility does not provide laboratory services, it makes arrangements to obtain these services from a participating hospital or skilled nursing facility, or a laboratory meeting the requirements of Part 493 of this chapter.

(3) All x-ray and laboratory services are provided only on the orders of the attending physician, who is notified promptly of the findings. The facility assists the patient, if necessary, in arranging for transportation to and from the source of service. Signed and dated reports of a clinical laboratory, X-ray, and other diagnostic services are filed with the patient's medical record.

(b) *Standard: Blood and blood products.* Blood handling and storage facilities are safe, adequate, and properly supervised. If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established in §§ 493.301 through 493.315 of this chapter. If the facility does not provide its own facilities but does provide transfusion services alone, it meets at least the requirements of §§ 493.305, 493.307, 493.309 and 493.315 of this chapter.

3–4. Subpart M (§§ 405.1310–405.1317) is removed and reserved and the table of contents is amended to reflect this change.

Subpart M [§§ 405.1310–405.1317]—[Reserved]

5. Subpart U is amended as follows:

a. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr).

b. The definition of histocompatibility testing in § 405.2102 is revised to read as follows:

§ 405.2102 Definitions.

* * * * *

Histocompatibility testing. Laboratory test procedures which determine compatibility between a potential organ donor and a potential organ transplant recipient.

* * * * *

c. Paragraph (d) of § 405.2171 is revised to read as follows:

§ 405.2171 Condition: Minimal services requirements for a renal transplantation center.

* * * * *

(d) *Standard: laboratory services.* (1) The Renal Transplantation Center makes available, directly or under arrangements, laboratory services to meet the needs of ESRD patients. Laboratory services are performed in a laboratory facility approved in accordance with Part 493 of this chapter to participate in the Medicare program and, for histocompatibility testing purposes, also meets §§ 493.221 through 493.239, 493.257, 493.259, 493.277, and 493.281 of this chapter and, when services are furnished in the subspecialty of histopathology, § 493.273 of this chapter.

(2) Laboratory services for cross-matching of recipient serum and donor lymphocytes for preformed antibodies by an acceptable technique are available on a 24-hour emergency basis.

B. Part 416 is amended as follows:

PART 416—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z and 1395aa).

2. Section 416.49 is revised to read as follows:

§ 416.49 Condition for coverage—Laboratory and radiologic services.

The ASC must have procedures for obtaining routine and emergency laboratory and radiologic services, from Medicare approved facilities, to meet the needs of patients. The laboratory offering the services must have been approved in accordance with Part 493 of this chapter, except for urinalyses, hemoglobins and hematocrits performed within a few days before, or on, the day of the surgery.

C. Part 440 is amended as follows:

PART 440—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 440.30 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

§ 440.30 Other laboratory and X-ray services.

"Other laboratory and X-ray services" means professional and technical laboratory and radiological services—

(a) Ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law or ordered and billed by a physician but provided by an independent laboratory as defined in § 405.1909(b) of this chapter.

* * * * *

D. Part 482 is amended as follows:

PART 482—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

2. Section 482.27 is revised as follows:

§ 482.27 Condition of participation: Laboratory services.

(a) The hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a facility approved by Medicare in accordance with Part 493 of this chapter.

(b) *Standard: Adequacy of laboratory services.* The hospital must have laboratory services available, either directly or through a contractual agreement with a Medicare approved hospital or independent laboratory, that meet the needs of the patients and the medical staff.

(1) Emergency laboratory services must be available 24 hours a day.

(2) A written description of services provided must be available to the medical staff.

(3) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(4) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examinations.

E. Part 483 is amended as follows:

PART 483—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1905 (c) and (d) of the Social Security Act (42 U.S.C. 1302, 1396d (c) and (d)).

2. Section 483.460(n) is revised to read as follows:

§ 483.460 Conditions of participation: Health care services.

* * * * *

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in Part 493 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(1) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(2) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(1) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided; and

(3) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in Part 493 of this chapter.

(4) The laboratory must meet the quality control requirements specified in Part 493 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

F. Part 488 is amended as follows:

PART 488—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt).

2. Section 488.52 is revised to read as follows:

§ 488.52 Special requirements applicable to independent laboratories.

(a) The services of a qualified independent laboratory for which reimbursement may be made under the supplementary medical insurance program relate only to diagnostic tests performed in an independent laboratory. Diagnostic laboratory tests for purposes of section 1861(s) (13) and (14) of the Act and for purposes of this Subpart S shall include only those clinical and anatomical pathology diagnostic tests and procedures listed in § 493.2 of this chapter under "laboratory". Such diagnostic tests performed by out-of-hospital physicians whose primary practice is directly attending patients and/or consultation (i.e., furnishing an attending physician with an opinion about a patient's condition or diagnosis), even though conducted partly through diagnostic procedures, are not considered services of an indendent laboratory except when they are done on referral.

(b) For purposes of this section, an independent laboratory is a facility meeting the requirements of Part 493 of this chapter and maintained for the purpose of performing diagnostic laboratory tests. An independent laboratory is not a facility that is controlled, managed or supervised by a hospital as defined by section 1861(e) of

the Act, a hospital's organized medical staff, or the attending or consulting physician's office.

G. A new Part 493 is added as follows:

PART 493—LABORATORY REQUIREMENTS

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493.1 Basis and scope.
493.2 Definitions.

Subpart B—Administration

493.11 Condition: Compliance with Federal, State and local laws.

Subpart C—Participation in Proficiency Testing

493.21 Condition: Enrollment and testing of samples.
493.22 Condition: Successful participation.
493.23 Condition: Successful participation before initial approval or licensure.
493.24 Reinstatement after failure to participate successfully.
493.25 Condition: Enhanced proficiency testing.

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493.33 Standard; Bacteriology.
493.35 Standard; Mycobacteriology.
493.37 Standard; Mycology.
493.39 Standard; Parasitology.
493.43 Condition: Diagnostic immunology.
493.45 Standard; Syphilis serology.
493.47 Standard; General immunology.
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493.51 Standard; Routine chemistry.
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493.55 Standard; Toxicology.
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493.61 Standard; Cytology: Gynecological examinations.
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Subpart D—Proficiency Testing Programs

493.91 Approval of proficiency testing programs.
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493.95 Disapproved proficiency testing programs.
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Proficiency Testing Programs by Specialty and Subspecialty

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493.99 Bacteriology.
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493.103 Mycology.
493.105 Parasitology.
493.107 Diagnostic immunology.
493.109 Syphilis serology.
493.111 General immunology.
493.115 Chemistry.
493.117 Routine chemistry.
493.119 Endocrinology.
493.121 Toxicology.
493.125 Hematology (including routine hematology and coagulation).
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493.201 Condition: Patient test management.

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493.221 Condition: General quality control.
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493.225 Standard; Adequacy of methods and equipment.
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493.231 Standard; Procedure manual.
493.233 Standard; Equipment, maintenance, and function checks.
493.235 Standard; Validation of methods.
493.237 Standard; Frequency of quality control.
493.239 Standard; Remedial actions.
493.240 Standard; Quality control—records.
493.241 Condition: Quality control—specialties and subspecialties.
493.243 Condition: Microbiology.
493.245 Standard; Bacteriology.
493.247 Standard; Mycobacteriology.
493.249 Standard; Mycology.
493.251 Standard; Parasitology.
493.253 Standard; Virology.
493.255 Condition: Diagnostic immunology.
493.257 Standard; Syphilis serology.
493.259 Standard; General immunology.
493.261 Condition: Chemistry.
493.263 Standard; Routine chemistry.
493.265 Standard; Endocrinology.
493.267 Standard; Toxicology.
493.269 Condition: Hematology.
493.270 Condition: Pathology.
493.271 Standard; Cytology.
493.273 Standard; Histopathology.
493.274 Standard; Oral pathology.
493.275 Condition: Radiobioassay.
493.277 Condition: Histocompatibility.
493.279 Condition: Medical cytogenetics.
493.281 Condition: Immunohematology.
493.301 Condition: Transfusion services and bloodbanking.
493.303 Standard; Immunohematological testing, processing, storage and transmission of blood and blood products.
493.305 Standard; Facilities.
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493.401 Condition: Laboratory director.
493.403 Standard; Laboratory director qualifications.
493.405 Standard; Laboratory director responsibilities.
493.407 Condition: Laboratory supervision.
493.409 Standard; Laboratory supervisor qualifications.
493.411 Standard; Laboratory supervisor duties.
493.413 Condition: Personnel performing cytology services.
493.415 Standard; Cytotechnologist qualifications.
493.417 Standard; Cytotechnologist duties.
493.419 Condition: Technical personnel.

Subpart H—Quality Assurance

493.451 Condition: Quality Assurance.

Subpart I—Inspection

493.501 Condition: Inspection.

Subpart J—CLIA Requirements

493.701 Basis and scope.
493.702 Definitions.
493.704 Licensure application and issuance.
493.706 Revocation and suspension of licenses and letters of exemption; notice.
493.708 Approval of accreditation and State licensure programs; notice.
493.710 Letter of exemption.
Appendix A—Laboratory Director Qualification Requirements Before [Effective Date of Regulations].
Appendix B—Technologist Requirements Before July 1, 1971.
Appendix C—Cytotechnologist Requirements Before [Effective Date of Regulations].

Authority: Secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12) and 1861(s)(13) of the Social Security Act and sec. 353 of the Public Health Service Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395 x[s][11], and secs. 1395x(s)(12) and (13).)

Subpart A—General Provisions

§ 493.1 Basis and scope.

This part set forth the conditions that laboratories must meet in order for their tests to be approved for coverage under the Medicare and Medicaid programs and in order for laboratories to be licensed to perform testing on specimens received in interstate commerce. It implements sections 1861(e) and (j), the sentence following section 1861(s)(11), sections 1861(s)(12) and (13), and 1902 of the Social Security Act, and section 353 of the Public Health Service Act. This part applies to: laboratories located in physicians' offices (including group medical practices) that perform any tests on referred specimens; hospitals meeting at least the requirements specified in section 1861(e) of the Act to qualify for emergency hospital services under section 1814 of the Act; skilled nursing facilities; intermediate care facilities for the mentally retarded; rural health clinics that perform tests on referral; ambulatory surgical centers except as provided in § 416.49 of this chapter; end-stage renal disease facilities except as provided in § 405.2163 of this chapter; and independent laboratories, as defined in § 405.1909 of this chapter. It does not apply to laboratories operated by a rural health clinic or physician's office exclusively for its own patients.

§ 493.2 Definitions.

As used in this part—

"Accredited laboratory" means a laboratory (including a laboratory in a hospital) accredited by, with respect to hospitals, the Joint Commission on the Accreditation of Healthcare Organizations or the American Osteopathic Association and, with respect to interstate licensed laboratories, the Commission on Laboratory Accreditation of the College of American Pathologists, or any other national accreditation organization that has been approved by HHS as provided in section 353 of the Public Health Service Act.

"Authorized person" means a person authorized under section 1861(r) of the Act to order and to receive test results. With respect to tests performed on individuals not receiving or seeking Medicare reimbursement, an authorized person is an individual not excluded under State law or by Medicaid.

"Challenge" means, for quantitative tests, an assessment of the amount of substance or analyte present in a sample. For qualitative tests, a challenge means the determination of the presence or the absence of an analyte, organism, or substance in a sample.

"CLIA" means the Clinical Laboratories Improvement Act of 1967 (Section 353 of the Public Health Service Act).

"Laboratory" means a facility for the microbiological, serological, chemical, hematological, cytological, histological, pathological, immunohematological, radiobioassay, cytogenetical, toxicological, histocompatibility or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health, of human beings. These examinations also include screening procedures to determine the presence or absence of various substances and organisms in the body. Facilities only collecting specimens or only serving as a mailing service and not performing testing are not considered laboratories.

"Referee laboratory" means a laboratory that has had a record of accurate performance for at least one year in a specific test specialty or subspecialty and has been designated by HHS as a referee laboratory for that specialty or subspecialty.

"Sample" means the material contained in a vial, a slide, or other unit that contains material to be tested by proficiency testing program participants. When possible, samples are of human origin.

"Target value" means either the mean of all responses after removal of outliers (those responses greater than 3 standard deviations from the original mean) or the mean established by groups of 20 or more participants that use the same methodology (to be used only when the method bias results in a skewed distribution of responses). If the method group is less than 20 participants, "target value" means the overall mean after outlier removal (as defined above) unless acceptable scientific reasons are available to indicate that such an evaluation is not appropriate.

Subpart B—Administration

§ 493.11 Condition—Compliance with Federal, State and local laws.

The laboratory must be in compliance with all applicable Federal, State and local laws.

(a) *Standard; Federal laws.* The laboratory must be in compliance with applicable Federal laws related to the health and safety of individuals whose specimens are submitted to it for testing.

(b) *Standard; State licensure.* The laboratory must be (1) licensed if State or applicable local law requires licensure; or (2) approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing laboratories.

(c) *Standard; licensed staff.* All personnel, including those individuals who collect specimens, must be licensed or meet other applicable standards that are required by State and local laws.

(d) *Standard; fire safety.* The laboratory must comply with State and local laws related to fire safety.

(e) *Standard; environment and health.* The laboratory must comply with Federal, State and local laws relating to the storage, handling and disposal of chemical, biological and radioactive materials.

Subpart C—Participation of Proficiency Testing

§ 493.21 Condition: Enrollment and testing of samples.

A laboratory must enroll in a proficiency testing program that meets the criteria in Subpart D of this part and is approved by HHS. The laboratory must enroll in such a program for each of the specialities and subspecialties for which it seeks or have approval for Medicare or Medicaid participation or for licensure under CLIA. The laboratory must test the samples in a routine manner.

(a) Standard; Enrollment. The laboratory must notify HHS of the approved program or programs in which it chooses to participate to meet proficiency testing requirements of this subpart. The laboratory must—

(1) Designate the program to be used for each specialty and subspecialty to determine compliance with this subpart if the laboratory participates in more than one proficiency testing program approved by HHS;

(2) For each speciality and subspecialty, participate in one approved proficiency testing program for four quarters before designating a different program and notify HHS before any change in designation; and

(3) Authorize the proficiency testing program to release to HHS all data required by HHS to determine the laboratory's compliance with this subpart.

(b) Standard; Testing of proficiency tesing samples. The laboratory must examine or test, as applicable, the proficiency testing samples it receives from the proficiency testing program in the same manner as it tests patient specimens.

(1) The samples must be examined or tested with the laboratory's regular patient workload by personnel who routinely perform the testing in the laboratory, using the laboratory's routine methods.

(2) The laboratory may not test the samples in duplicate unless it routinely tests patient samples in duplicate.

(3) The laboratory may not send the samples or portions of samples to another laboratory for analysis.

(4) The laboratory must document the handling, processing, examination, testing and reporting of results for all proficiency testing samples and the records must be maintained for a minimum of two years from the date of the proficiency testing shipment or testing event.

§ 493.22 Condition: Successful participation.

(a) Each laboratory must successfully participate in a proficiency testing program approved by HHS as described in Subpart D of this part for each specialty and subspecialty in which the laboratory seeks Medicare approval or licensure under CLIA.

(b) If the laboratory fails to participate successfully in proficiency testing for a given specialty or subspecialty, the laboratory's Medicare approval or licensure under CLIA, or both, will be terminated for the specialty or subspecialty unless the laboratory enrolls within 15 days of notification of unsuccessful speciality or subspecialty performance and successfully participates in an approved enhanced proficiency testing program as described in § 493.25.

(c) If the laboratory fails to perform satisfactorily for the challenges on a given analyte or test procedure, the laboratory performance for the specialty or subspecialty in which the analyte is categorized is considered unsuccessful. The laboratory's Medicare-approval or licensure under CLIA, or both, for the specialty or subspecialty will be terminated unless the laboratory enrolls within 15 days of notification of unsatisfactory analyte performance and satisfactorily performs in an approved enhanced proficiency testing program as described in § 493.25 for the failed analyte.

§ 493.23 Condition: Successful participation before initial approval or licensure.

Laboratories must successfully participate for three consecutive proficiency testing shipments for each specialty and subspecialty before initial Medicare or Medicaid approval or CLIA, licensure of the specialty or subspecialty.

§ 493.24 Reinstatement after failure to participate successfully.

(a) If a laboratory fails to participate successfully in one or more specialties or subspecialties, and does not request enrollment in the enhanced proficiency testing program described in § 493.25 of this subpart or voluntarily withdraws its participation from Medicare or Medicaid or its licensure under CLIA (or any applicable combination of the three) for the failed specialty or subspecialty, the laboratory's participation or licensure for the applicable specialty or subspecialty will be terminated. The laboratory must then demonstrate sustained successful performance on three consecutive enhanced proficiency testing shipments or onsite testing events (or combination thereof) in a period of no less than six months before HHS will consider it for reinstatement in the specialty or subspecialty.

(b) If the laboratory enrolls in and fails to participate successfully in the enhanced proficiency tesing program for the failed specialty or subspecialty, the laboratory's Medicare approval or licensure under CLIA, or both, for the applicable specialty or subspecialty will be terminated. The laboratory must then demonstrate sustained successful performance in three consecutive enhanced proficiency testing shipments or testing events (or combination thereof) before HHS will consider it for reinstatement in that specialty or subspecialty.

(c) The termination period for Medicare participation or period for revocation of licensure under CLIA for the failed specialty or subspecialty is for a period of not less than six months from the date of termination or revocation.

§ 493.25 Condition: Enhanced proficiency testing.

Each laboratory that fails proficiency testing in a specialty, subspecialty (except cytology) or analyte must successfully participate in an enhanced proficiency testing program for three consecutive shipments or onsite testing events (or combination). (These shipments or testing events may be provided quarterly or more frequently.) Enhanced proficiency testing consists of six specimens per shipment or testing event for the subspecialties included within the specialties of diagnostic immunology, chemistry, hematology, and immunohematology and consists of twelve specimens per shipment for bacteriology, mycobacteriology, mycology and parasitology. (Because cytology has its own remedial program, there is no enhanced proficiency testing for it. See § 493.61 of this subpart.) The enhanced proficiency testing shipment or testing event consists of challenges for the overall specialty or subspecialty when the failure in proficiency testing is for a specialty or subspecialty or consists of analyte challenges when individual analyte(s) are failed in proficiency testing. The samples must be tested as in § 493.21(b).

(a) To participate successfully in enhanced proficiency testing, the laboratory—

(1) Must perform successfully on each shipment or testing event of enhanced proficiency testing by achieving an overall shipment score of at least 80% on each of the three shipments or testing events when unsuccessful proficiency testing performance is in a specialty or subspecialty; and

(2) Must perform satisfactorily on each shipment or testing event of enhanced proficiency testing by achieving correct responses on five of six specimens for the first shipment or testing event; ten of 12 specimens for the first and second shipments or testing events (or combination) and 15 of 18 specimens for all three shipments or testing events (or combination) of the failed analyte when unsatisfactory proficiency testing performance is for any analyte.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return enhanced proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the survey.

(d) Evaluation of a laboratory's analyte or test performance and the criteria for acceptable analyte performance in the enhanced proficiency testing program for each specialty, subspecialty and analyte is the same as that described in Subpart D for the proficiency testing program.

(e) Following three shipments or testing events (or combination) of enhanced proficiency testing in which the laboratory performs successfully for the failed specialty or subspecialty or satisfactorily for each failed analyte, the laboratory returns to proficiency testing as specified in § 493.21.

(f) If the laboratory performs unsuccessfully on any of the three enhanced proficiency testing shipments or testing events for the failed specialty or subspecialty or performs unsatisfactorily on any of the three enhanced proficiency testing shipments or testing events for a failed analyte that results in unsuccessful performance for the specialty or subspecialty in which the analyte is categorized, termination in the applicable specialty or subspecialty will be effective 15 days after notification of unsuccessful or unsatisfactory performance in the enhanced proficiency testing program.

Proficiency Testing by Specialty and Subspecialty

§ 493.31 Condition: Microbiology.

The specialty of microbiology includes, for purposes of proficiency testing, the subspecialties of bacteriology, mycobacteriology, mycology and parasitology.

(a) To participate successfully in microbiology the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for any testing event or shipment. The average score is the sum of shipment or testing event scores for bacteriology, mycobacteriology, mycology and parasitology divided by the total number of the subspecialties for which the laboratory seeks, or has Medicare or Medicaid approval of CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing service within the timeframes specified results in a score of 0 for the shipment.

§ 493.33 Standard: Bacteriology.

(a) To participate successfully in a bacteriology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in score of 0 for the shipment.

§ 493.35 Standard; Mycobacteriology.

(a) To participate successfully in a mycobacteriology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.37 Standard; Mycology.

(a) To participate successfully in a mycology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.39 Standard; Parasitology.

(a) To participate successfully in a parasitology proficiency testing program, the laboratory must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.43 Condition: Diagnostic immunology.

The specialty of diagnostic immunology includes for the purposes of proficiency testing the subspecialties of syphilis serology and general immunology.

(a) To participate successfully in diagnostic immunology the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for a given testing event or shipment. The average score is the sum of shipment or testing event scores for syphilis serology and general immunology divided by the total number of subspecialties for which the laboratory seeks, or has, Medicare or Medicaid approval or CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the time frames specified results in a score of 0 for the shipment by the program.

§ 493.45 Standard; Syphilis serology.

(a) To participate successfully in a syphilis serology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable; and

(2) Must attain a score of 80% acceptable responses in a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.47 Standard; General immunology.

(a) To participate successfully in a general immunology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% of acceptable responses for a given event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.49 Condition: Chemistry.

The specialty of chemistry includes for the purposes of proficiency testing the subspecialties of routine chemistry endocrinology and toxicology.

(a) To participate successfully in chemistry the laboratory must attain an average score of 80% for a given testing event or shipment and may not have a score in any subspecialty of less than 80% for a testing event or shipment. The average score is the sum of the shipment scores of routine chemistry, endocrinology and toxicology divided by the total number of the subspecialties for which the laboratory seeks, or has, Medicare or Medicaid approval or CLIA licensure.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program within the time frames specified by the program results in a score of 0 for the shipment.

§ 493.51 Standard; Routine chemistry.

(a) To participate successfully in a routine chemistry proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.53 Standard; Endocrinology.

(a) To participate successfully in an endocrinology proficiency testing program, the laboratory:

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.55 Standard; Toxicology.

(a) To participate successfully in a toxicology proficiency testing program, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipment, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain a score of 80% acceptable responses for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.57 Condition: Hematology.

(a) To participate successfully in a proficiency testing program for the specialty of hematology, the laboratory—

(1) For any testing event or shipment, may not have a test or analyte for which all results have been unacceptable;

(2) For the same analyte in two consecutive testing events or shipments, may not have an unsatisfactory result on one of the two challenges; and

(3) Must attain an average score of 80% for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

§ 493.59 Condition: Pathology.

The specialty of pathology includes, for purposes of proficiency testing, the subspecialty of cytology limited to gynecologic examinations.

§ 493.61 Standard; Cytology: Gynecologic examinations.

(Option 1. Onsite proficiency testing)

To participate successfully in a cytology proficiency testing program for gynecologic examinations (Pap smears), the laboratory must meet the requirements of paragraphs (a) through (d) of this section.

(a) The laboratory must require each individual engaged in the examination of cytologic preparations to be tested directly either onsite at the laboratory or at an offsite location that is chosen by HHS.

(b) The laboratory may have no individual who achieves grades of less than (80–100) [1] percent for any testing event and (80–100) percent overall for three consecutive testing events.

(c) The first time an individual fails any part of a proficiency testing event, the laboratory must provide him or her with immediate remedial training and education in the area of the failure and must review the areas passed. If the individual fails 50 percent or more of two testing events, the laboratory must implement a more stringent form of remedial action, up to prohibiting the individual from reporting negative slides, until the individual has been retrained and scores 100 percent on two consecutive proficiency testing events.

(d) If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any proficiency testing event, all individuals engaged in the examination of cytologic preparations must undergo additional training and education in addition to that required in Subpart G of this part and the laboratory must participate in a retrospective proficiency testing program until the laboratory achieves 95 percent correct responses over three subsequent consecutive proficiency testing events.

(e) If the laboratory fails to take required remedial actions as described in paragraphs (c) and (d) of this section when individuals are found to be failing the proficiency testing program, HHS will terminate the laboratory's Medicare approval for gynecologic cytology testing or revoke its licensure under CLIA, or both if applicable. If either two or more or 10 percent or more of the individuals in a laboratory, whichever number is greater, fail two or more consecutive testing events, HHS will terminate the laboratory's Medicare approval or revoke the laboratory's CLIA license, or both if applicable, for gynecologic cytology.

(Option 2. Proficiency testing by mail)

To participate successfully in a cytology proficiency testing program for Pap smears, the laboratory must meet the requirements of paragraphs (a) through (d) of this section.

(a) The laboratory may test each individual engaged in the examination of cytologic preparations using prepared materials received from the proficiency testing program.

(b) The laboratory may have no individual who achieves grades of less than (80–100) percent for any shipment and (80–100) percent overall for three consecutive shipments.

(c) The first time an individual fails any part of a proficiency testing shipment, the laboratory must provide the individual with immediate remedial training and education in the area of the failure and review the areas passed. If the individual fails 50 percent or more of two shipments, the laboratory must implement a more stringent form of remedial action up to prohibiting the individual from reporting negative slides until the individual has been retrained and scores 100 percent on two consecutive proficiency testing shipments.

(d) If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any shipment, all individuals engaged in the examination of cytologic preparations must undergo additional training and education in addition to that required in Subpart G of this part and the laboratory must participate in a retrospective proficiency testing program until the laboratory achieves 95 percent correct responses over three subsequent shipments.

(e) If the laboratory fails to take required remedial actions as described in paragraphs (c) and (d) of this section when individuals fail the proficiency testing program, HHS will terminate the laboratory's Medicare approval for gynecologic cytology testing or revoke the laboratory's CLIA license (or both if applicable). If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail two or more consecutive shipments, HHS will terminate the laboratory's

[1] We are identifying what we believe to be a range of acceptable scores and are interested in comments about the precise value that we should select.

Medicare approval or revoke the laboratory's CLIA license (or both if applicable) for gynecologic cytology.

(Option 3. Combination of Options 1 and 2)

(Reserved—Will be determined by comments to NPRM)

§ 493.63 Condition: Immunohematology.

(a) For the specialty of immunohematology, there is no overall specialty score for each shipment or testing event, since the proficiency testing in immunohematology is defined by performance in subspecialty services. To participate successfully in an immunohematology proficiency testing program, the laboratory must attain a score of 100% acceptable responses for the subspecialties of grouping, typing, antibody detection and crossmatch compatibility for incompatible crossmatches. More than one false incompatible result (for a compatible sample) in any shipment or testing event will result in failure of the shipment. For the subspecialty of antibody identification, a score of 80% is required for a given testing event or shipment.

(b) Failure to participate in a shipment or testing event, except when services are not offered for patient testing, results in a score of 0 for the shipment or testing event.

(c) Failure to return proficiency testing results to the proficiency testing program in the timeframes specified by the program results in a score of 0 for the shipment.

Subpart D—Proficiency Testing Programs

§ 493.91 Approval of proficiency testing programs.

In order for a proficiency testing program to receive HHS approval, the program must, for each specialty and subspecialty for which it provides testing—

(a) Assure the quality of test samples, appropriately evaluate the testing results, and identify performance problems in a timely manner; and

(b) Demonstrate to HHS that it has—

(1) The technical ability required to prepare and distribute samples, using rigorous quality control to assure that samples mimic actual patient specimens when possible and that samples are homogeneous and will be stable within the time frame for analysis by proficiency testing participants;

(2) A scientifically defensible process for determining the correct answer for each challenge offered by the program;

(3) A program of sufficient annual challenge and frequency to establish that a laboratory has met minimum performance requirements; and

(4) The resources needed to provide, statewide or nationwide, reports to regulatory agencies on individual laboratory performance on shipments or testing events, cumulative reports about laboratory performance, and reports of specific laboratory failures using grading criteria acceptable to HHS on a timely basis; and

(c) Meet the specific criteria for proficiency testing programs listed by specialty and subspecialty of services contained in §§ 493.91–943.153 for initial approval and thereafter provide HHS, on an annual basis, with a description of program content and grading criteria.

§ 493.93 Administrative responsibilities.

The proficiency testing program must—

(a) Issue reports in a format approved by HHS on each laboratory's performances for the individual Medicare, Medicaid or CLIA-licensed specialty or subspecialty of service within 30 days from the date by which the laboratory must report proficiency testing results to the proficiency testing program. Copies of these laboratory reports must be sent to the State survey agency at the same time reports are sent to the laboratory.

(b) Furnish to HHS cumulative reports on an individual laboratory's performance and aggregate data on Medicare approved and CLIA-licensed laboratories;

(c) Provide HHS with additional information and data upon request; and

(d) Maintain records of Medicare-approved and CLIA-licensed laboratories' performance for a period of five years or such time as may be necessary for any legal proceedings.

§ 493.95 Disapproved proficiency testing programs.

If a proficiency testing program fails to meet the criteria contained in §§ 493.97-493.153 for approval of the proficiency testing program, HHS will notify the program and all laboratories that are Medicare-approved or CLIA-licensed of the non-approval and the reasons for non-approval.

§ 493.96 Process for updating proficiency testing program.

HHS reviews the requirements for proficiency testing on a regular basis and considers revisions to the program based on the performance of laboratories. It will change requirements after soliciting comments from all concerned groups regarding the need to modify the criteria for an approved proficiency testing program. Changes in the program may be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete or well-performed tests, or to improve the valuation scheme. When HHS decides to include new challenges or evaluation criteria in future proficiency testing, it will notify all proficiency testing programs of the necessary changes in proficiency testing and require these changes to be provided by approved proficiency testing programs within two years of the notice of change.

Proficiency Testing Programs by Specialty and Subspecialty

§ 493.97 Microbiology.

The subspecialties under the specialty of microbiology for which a program may offer proficiency testing are bacteriology, mycobacteriology, mycology, and parasitology. Specific criteria for these subspecialties are found at 493.99 through 493.153.

§ 493.99 Bacteriology.

(a) *Types of laboratories.* In bacteriology, for proficiency testing purposes, there are three types of laboratories:

(1) Those that interpret only Gram stains, use direct antigen techniques to detect an organism, perform primary inoculation, or perform any combination of these;

(2) Those that—

(i) May use direct antigen techniques to detect an organism or isolate aerobic and anaerobic bacteria from mixed bacterial populations; and

(ii) Perform limited identification, perform antimicrobial susceptibility tests on selected microorganisms isolated, or both; and

(3) Those that—

(i) Are able to identify aerobic and anaerobic bacteria from mixed bacterial populations to both genus and species in most instances and perform antimicrobial susceptibility tests on the microorganisms isolated; or

(ii) May use direct antigen techniques to detect an organism.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for bacteriology, the annual program must provide a minimum of six samples per quarter. The samples may be provided to the laboratory through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. An annual program must include bacterial species that are representative of the six major groups of bacteria: anaerobes, Enterobacteriaceae, Gram-positive bacilli, Gram-positive cocci, Gram-

negative cocci, and miscellaneous Gram-negative bacteria.

(1) An approved program must, during each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. Some of the bacterial species representative of the six major groups must be varied from year to year. At least 50% of the samples must be mixtures of the principal organism and appropriate normal flora. The program must include other important emerging pathogens (as determined by HHS) and either organisms commonly occurring in patient specimens or opportunistic pathogens. The program must include two types of samples and each must meet the 50 percent mixed culture criterion:

(i) Samples that require laboratories to report only organisms that the testing laboratory considers to be a significant pathogen that is clearly responsible for a described illness. The program determines the reportable isolates, including antimicrobial susceptibility for the isolate.

(ii) Samples that require laboratories to report all organisms present. Samples must contain multiple organisms frequently found in specimens such as urine, blood, abscesses, and aspirates where multiple isolates are clearly significant or where specimens are derived from immunocompromised patients. The program determines the reportable isolates.

(2) An approved program may vary over time. For example, the types of organisms that might be included in an approved program over time are—

Anaerobes
Bacteroides fragilis group
Clostridium perfringens
Peptostreptococcus anaerobius
Enterobacteriaceae
Klebsiella pneumoniae
Salmonella typhimurium
Serratia marcescens
Shigella sonnei
Yersinia enterocolitica
Gram-positive bacilli
Listeria monocytogenes
Corynebacterium Species CDC group JK
Gram-positive cocci
Staphylococcus aureus
Streptococcus Group A
Streptococcus Group B
Streptococcus Group D (S. *bovis* and *enterococcus)*
Streptococcus pneumoniae
Gram-negative cocci
Branhamella catarrhalis
Neisseria gonorrhoeae
Neisseria meningitidis
Miscellaneous Gram-negative bacteria
Campylobacter jejuni
Haemophilis influenza, Type B

(3) For antimicrobial susceptibility testing, the program must provide at least one sample per quarter that includes Gram-positive or Gram-negative strains that have a predictable pattern of sensitivity or resistance to the common antimicrobial agents.

(c) *Evaluation of a laboratory performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response which reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the score for the shipment or testing event.

(2) For samples described in paragraph (b)(1)(i) of this section, failure to report the specific pathogen or reporting an additional organism as a pathogen must receive equal penalty. For samples described in paragraph (b)(1)(ii) of this section, misidentification or failure to report an isolate receives equal penalty. The total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported is multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not considered reportable, the sample grade would be $1/(1+1)\times100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, the program must use the laboratory's type of service as determined in accordance with paragraph (a) of this section to determine the appropriateness of the laboratory's response.

(4) For antimicrobial susceptibility testing, laboratories must report those antimicrobial agents considered appropriate for the causative organism and infection site. Determination of which antimicrobial agents are appropriate must be based on a consensus document such as a National Committee on Clinical Laboratory Standards (NCCLS) publication. Grading is based on the number of correct responses divided by the number of appropriate drugs tested. A laboratory must indicate which antibiotics are included in its test panel; the program may evaluate the laboratory only for those antibiotics for which service is offered.

(5) A laboratory's shipment score for bacteriology is the score for organism identification or, if the laboratory also performs antimicrobial susceptibility testing, the score determined by dividing the total number of possible organisms a laboratory should have identified plus the number of correct antimicrobial agent responses by the number of correctly identified organisms plus the number of additional organisms reported plus the number of appropriate antimicrobial agents tested multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a shipment or testing event contained three reportable organisms and a laboratory reported all three correctly, but reported one additional organism and made one error in antimicrobial susceptibility testing of three appropriate agents tested, its score for bacteriology would be: $(3+2)/(3+1+3)\times100=71\%$.

§ 493.101 Mycobacteriology.

(a) *Types of laboratories.* In mycobacteriology, there are three types of laboratories for proficiency testing purposes:

(1) Those that perform acid-fast stains and refer cultures to another laboratory for identification;

(2) Those that isolate and perform identification of Mycobacterium tuberculosis, but refer cultures other than M. tuberculosis to another laboratory for identification, perform antimycobacterial susceptibility tests on the organisms isolated, or both; and

(3) Those that isolate and identify all mycobacteria to the extent required for correct clinical diagnosis, perform antimycobacterial susceptibility tests on the organisms isolated, or both.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycobacteriology, the annual program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, at HHS' option, provided to HHS for on-site testing. An approved program must furnish HHS a description of samples that it plans to include in its program during each calendar year.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c) (1) through (3) of this section.

(1) The program determines the reportable organisms. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response which reflects agreement of at least 80% or more of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the shipment or testing event score.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must provide a means of deducting credit for additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, the program must use a laboratory's type of service as determined in accordance with paragraph (a) of this section to determine the appropriateness of the laboratory's response.

§ 493.103 Mycology.

(a) *Types of laboratories.* In mycology, there are three types of laboratories for proficiency testing purposes that may perform different levels of service for yeasts, dimorphic fungi, dermatophytes, and aerobic actinomycetes:

(1) Those that perform direct examination and culture, recognizing the type of organism that is present and referring isolates to another laboratory for identification;

(2) Those that isolate and perform identification to the genus and, in some cases, the species level or to the extent required to differentiate recognized pathogens from others; and

(3) Those that isolate and identify organisms to the extent required for correct clinical diagnosis.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycology, the annual program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, or at HHS' option, may be provided to HHS for on-site testing. An annual program must include representatives of five major groups of organisms: yeast or yeast-like fungi; dimorphic fungi; dematiaceous fungi; dermatophytes; and saprophytes, including opportunistic fungi.

(1) An approved program must furnish HHS, during the calendar year, with a list of organisms that will be included in its annual program. Some of the organisms representative of the five major groups must vary from year to year. At least 50% of the samples must be mixtures of the principal organism and appropriate normal background flora. Other important emerging pathogens (as determined by HHS) and organisms commonly occurring in patient specimens must be included periodically in the program.

(2) An approved program may vary over time. As an example, the types of organisms that might be included in an approved program over time are—

Candida albicans
Candida (other species)
Cryptococcus neoformans
Sporothrix schenchii
Exophiala jeanselmei
Fonsecaea pedrosoi
Acremonium sp.
Trichophyton sp.
Aspergillus fumigatus
Nocardia sp.
Blastomyces dermatitidis [2]
Zygomycetes sp.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c)(1) through (3) of this section.

(1) The program determines the reportable organisms. To determine the accuracy of a laboratory's response the program must compare the laboratory's response for each sample with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. Sample scores must be averaged to determine the survey score.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must deduct credit for these additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent it performs it with patient specimens, a laboratory's type of service as determined in accordance with paragraph (a) of this section must be used to determine the appropriateness of it response.

§ 493.105 Parasitology.

(a) *Types of laboratories.* In parasitology there are three types of laboratories for proficiency testing purposes—

(1) Those that are able to recognize the presence of parasites but usually refer them to another laboratory for identification;

(2) Those that identify parasites to the extent required to establish a correct clinical diagnosis without performing permanent stains for identification; and

(3) Those that identify parasites to the extent required to establish a correct clinical diagnosis and perform permanent stains.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing in parasitology, a program must provide a minimum of six samples per quarter. The samples may be provided through mailed shipments or, or at HHS option, may be provided to HHS for on-site testing. An annual program must include parasites that are commonly encountered in the United States as well as those recently introduced into the United States. Other important emerging pathogens (as determined by HHS) and organisms commonly occurring in patient specimens must be included periodically in the program.

(1) An approved program must furnish HHS, during the calendar year, with a list of organisms that will be included in its annual program. Samples must include both formalinized specimens and PVA (polyvinyl alcohol) fixed specimens and blood smears, as appropriate for a particular parasite and stage of the parasite. Samples must contain protozoa or helminths or a combination of parasites. Some samples must be devoid of parasites.

(2) An approved program may vary over time. As an example, the types of organisms that might be included in an approved program over time are—

Entamoeba histolytica

[2] Provided as a nonviable sample.

Entamoeba coli
Giardia lamblia
Endolimax nana
Dientamoeba fragilis
Iodamoeba butschlii
Chilomastix mesnili
Hookworm
Ascaris lumbricoides
Strongyloides stercoralis
Trichuris trichiura
Enterobius vermicularis
Diphyllobothrium latum
Cryptosporidium sp.
Plasmodium falciparum

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) The program must determine the reportable organisms. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. Sample scores must be averaged to determine the score for the shipment or testing event.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must deduct credit for these additional erroneous organisms reported. Therefore, the total number of correct responses divided by the number of organisms present plus the number of incorrect organisms reported must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) As a laboratory is expected to perform the isolation and identification process to the same extent as it performs it with patient specimens, a laboratory's type of service as determined in accordance with paragraph (a) of this section must be used to determine the appropriateness of its response.

§ 493.107 Diagnostic immunology.

The subspecialties under the specialty of immunology for which a program may offer proficiency testing are syphilis serology and general immunology. Specific criteria for these subspecialties are found at §§ 493.109 and 493.111.

§ 493.109 Syphilis serology.

(a) *Program content and frequency of challenge.*—The annual program must provide a minimum of five samples per quarter and must provide samples that cover the full range of reactivity from highly reactive to nonreactive. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum challenges per quarter a program must offer for syphilis serology are five.

(c) *Evaluation of analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response for a qualitative syphilis test, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. The proficiency testing program must indicate the minimum concentration that will be considered as indicating a positive response. For quantitative syphilis tests, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the program must determine the appropriateness of the response by using either fixed criteria or the number of standard deviations the response differs from the target values.

(3) The criterion for acceptable performance for syphilis serology is the target value ± 1 dilution or (positive or negative).

§ 493.111 General immunology.

(a) *Program content and frequency of challenge.*

To be approved for proficiency testing for immunology, the annual program must provide a minimum of two samples per quarter and must provide samples that cover the full range of reactivity from highly reactive to nonreactive. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter the program must provide for each analyte or test procedure is two.

Analyte or Test Procedure

Alpha-1 antitrypsin
Alpha-fetoprotein
Antinuclear antibody
Antistreptolysin O
Anti-human immunodeficiency virus (HIV)
Complement C3
Complement C4
Hepatitis markers (HBsAg, anti-HBc, HBeAg)
IgA
IgG
IgE
IgM
Infectious mononucleosis
Rheumatoid factor
Rubella

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (4) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative immunology tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. The proficiency testing program must indicate the minimum concentration that will be considered as indicating a positive response. For quantitative immunology analytes or tests, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

Analyte or Test	Criteria for acceptable performance
Alpha-1 antitrypsin	Target value ±3 SD.
Alpha-fetoprotein	Target value ±3 SD.
Antinuclear antibody	Target value ±1 dilution or (pos. or neg.).
Antistreptolysin O	Target value ±1 dilution or (pos. or neg.).
Anti-human Immunodeficiency Virus.	Reactive or nonreactive.
Complement C3	Target value ±3 SD.
Complement C4	Target value ±3 SD.
Hepatitis (HBsAg, anti-HBc, HBeAg).	Reactive (positive) or nonreactive (negative).
IgA	Target value ±3 SD.
IgE	Target value ±3 SD.
IgG	Target value ±3 SD.
IgM	Target value ±3 SD.

Analyte or Test	Criteria for acceptable performance
Infectious mononucleosis.	Target value ±1 dilution or (pos. or neg.).
Rheumatoid factor	Target value ±1 dilution or (pos. or neg.).
Rubella	Target value ±1 dilution or (pos. or neg.).

§ 493.115 Chemistry.

The subspecialties under the specialty of chemistry for which a proficiency testing program may offer proficiency testing are routine chemistry, endocrinology and toxicology. Specific criteria for these subspecialties are listed in 493.117 through 493.119.

§ 493.117 Routine chemistry.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for chemistry, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The specimens may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

Analyte or Test Procedure

Alanine aminotransferase (ALT/SGPT)
Albumin
Alkaline phosphatase
Amylase
Aspartate aminotransferase (AST/SGOT)
Bilirubin, total
Blood gas pH
pO_2
pCO_2
Calcium, total
Chloride
Cholesterol, total
Cholesterol, high density lipoprotein
Creatine kinase
Creatine kinase, isoenzymes
Creatinine
Glucose
Iron, total
Lactate dehydrogenase (LDH)
LDH isoenzymes
Magnesium
Potassium
Sodium
Triglycerides
Urea Nitrogen
Uric Acid

(c) *Evaluation of a laboratory analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative chemistry tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more reference laboratories or all participating laboratories. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.*

The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Alanine aminotransferase (ALT/SGPT).	Target value ±20%.
Albumin	Target value ±10%.
Alkaline phosphatase	Target value ±3 SD.
Amylase	Target value ±3 SD.
Aspartate aminotransferase (AST/SGOT).	Target value ±10%.
Bilirubin, total	Target value ±.3 mg/dL or 20% (greater term).
Blood gas p02	Target value ±3 SD.
pC02	Target value ±3 mm Hg or 8% (greater).
pH	Target value ±.04.
Calcium, total	Target value ±.8mg/dL.
Chloride	Target value ±5%.
Cholestrol, total	Target value ±15%.
Cholestrol, high density lipoprotein.	Target value ±3 SD.
Creatine kinase	Target value ±3 SD.
Creatine kinase isoenzymes.	MB elevated (+ or −) or Target value ±3 SD.
Creatinine	Target value ±.2 mg/dL or 7% (greater term).
Glucose	Target value ±10%.
Iron, total	Target value ±20%.
Lactate dehydrogenase (LDH).	Target value ±20%.
LDH isoenzymes	LDH1/LDH2 (+ or −) or Target value ± 3 SD.
Magnesium	Target value ±25%.
Potassium	Target value ±.3 mmol/L.
Sodium	Target value ±3 mmol/L or ±4 mmol/1 if target value is above 150 mmol/L.
Triglycerides	Target value ±3 SD.
Urea nitrogen	Target value ±2 mg/dL or 9% (greater).
Uric acid	Target value ±17%.

§ 493.119 Endocrinology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for endocrinology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

Analyte or Test

Cortisol
Thyroid-stimulating hormone
Thyroxine

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses on qualitative tests or analytes, a program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories agree. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Cortisol	Target value ±25%.
Thyroxine	Target value ±2SD.
Thyroid-stimulating hormone.	Target value ±3SD.

§ 493.121 Toxicology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for toxicology, the annual program must provide a

minimum of two samples per quarter. The annual program must provide samples that cover the clinically relevant range of values that would be expected in specimens of patients on drug therapy and that cover the level of clinical significance for the particular drug. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide or for each analyte or test procedure is two.

Analyte or Test Procedure

Alcohol (blood)
Blood lead
Carbamazepine
Digoxin
Ethosuximide
Gentamicin
Lithium
Phenobarbital
Phenytoin
Primidone
Procainamide (and metabolite)
Quinidine
Theophylline
Valproic Acid

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. For quantitative chemistry tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are:

Analyte or test	Criteria for acceptable performance
Alcohol, blood	Target value ±25%.
Blood lead	Target value ±15% or 6 mcg/dL (greater).
Carbamazepine	Target value ±25%.
Digoxin	Target value ±20% or ±.2 ng/mL (greater term).
Ethosuximide	Target value ±20%.
Gentamicin	Target value ±25%.
Lithium	Target value ±.2 mmol/L.
Phenobarbital	Target value ±20%.
Phenytoin	Target value ±25%.
Primidone	Target value ±25%.
Procainamide (and metabolite).	Target value ±25%.
Quinidine	Target value ±25%.
Theophylline	Target value ±25%.
Valproic Acid	Target value ±25%.

§ 493.125 Hematology (including routine hematology and coagulation).

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for hematology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the full range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

Analyte or Test Procedure

Cell identification
White cell differential
Erythrocyte count
Hematocrit
Hemoglobin
Leukocyte count
Platelet count
Fibrinogen
Partial thromboplastin time
Prothrombin time

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative tests or analytes, the program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 80% of ten or more referee laboratories or all participating laboratories. For quantitative hematology tests or analytes, the program must determine the correct response for each challenge by the distance of the response from the target value.

(2) After the target value has been established for each response, the appropriateness of the response is determined using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are:

Analyte or test	Criteria for acceptable performance
Cell identification	80% consensus on identification.
White cell differentiation	Target ±3 SD.
Erythrocyte count	Target ±3 SD or 6% (lesser).
Hematocrit	Target ±3 SD or 6% (lesser).
Hemoglobin	Target ±3 SD or 5% (lesser).
Leukocyte count	Target ±3 SD or 10% (lesser).
Platelet count	Target ±3 SD or 25% (lesser).
Fibrinogen	Target ±3 SD.
Partial thromboplastin time.	Target ±3 SD or ±15% (greater).
Prothrombin time	Target ±3 SD or ±15% (greater).

§ 493.129 Cytology: Gynecologic examinations.

(Option 1—Onsite PT)

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for gynecologic examinations (Pap smears) in cytology, a program must provide onsite testing. The testing may be at the laboratory or at another site. The program must provide (5 to 12) [3] challenges per testing event (1 to 4) [3] times per year. Each testing event must include normal challenges, infectious agents, benign reactive processes, premalignant processes, and malignant processes.

(b) *Evaluation of an individual's performance.* HHS approves only those programs that assess the responses of each individual engaged in the examination of cytologic preparations. The program must assess the accuracy of each individual's response by using slides that have been referenced.

(1) A slide with atypical results is referenced if there has been a confirmation by tissue biopsy.

(2) A slide with negative results is referenced if there is 95 per cent consensus agreement. The reference review must be conducted before testing the laboratory.

[3] We are inviting comments on the number of challenges and their frequency and are proposing what we consider to be realistic ranges.

(Option 2—Mailed PT)

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for gynecologic examinations (Pap smears) in cytology, a program must provide (5–12) challenges per shipment (1 to 4) times per year. Each shipment must include normal challenges, infectious agents, benign reactive processes, premalignant processes, and malignant processes.

(b) *Evaluation of an individual's performance.* HHS approves only those programs that assess the responses of each individual engaged in the examination of cytologic preparations. The program must assess the accuracy of each individual's response by using slides that have been referenced.

(1) A slide with atypical results is referenced if there has been a confirmation by tissue biopsy.

(2) A slide with negative results is referenced if there is 95 per cent consensus agreement. The reference review must be conducted before testing the laboratory.

§ 493.153 Immunohematology.

(a) *Types of laboratories.* In immunohematology, there are three types of laboratories for proficiency testing purposes—

(1) Those that perform ABO and/or Rh typing but do not perform irregular antibody detection or identification;

(2) Those that perform ABO and/or Rh typing, compatibility testing, irregular antibody detection and crossmatching but do not perform antibody identification; and

(3) Those that perform ABO and/or Rh typing, compatibility testing, irregular antibody detection and crossmatching and also perform antibody identification.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for immunohematology, a program must provide a minimum of two samples per quarter. The annual program must provide samples that cover the full range of interpretation that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(c) *Challenges per quarter.* The minimum number of challenges per quarter a program must provide for each analyte or test procedure is two.

Analyte or Test Procedure
ABO grouping
Rh typing
Antibody detection
Antibody identification
Crossmatch compatibility

(d) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (d)(1) through (3) of this section.

(1) To determine the accuracy of a laboratory's response, a program must compare the laboratory's response for each challenge with the response that reflects agreement of at least 90% of ten or more referee laboratories or all participating laboratories.

(2) After the target value has been established for each response, the appropriateness of the response is determined using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

(3) *Criteria for acceptable performance.* The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
ABO grouping	100% accuracy on 95% consensus.
Rh typing	100% accuracy on 95% consensus.
Antibody detection	100% accuracy on 90% consensus.
Antibody identification	80% accuracy on 90% consensus.
Crossmatch compatibility.	100% accuracy on 95% consensus for incompatible crossmatches and no more than one false incompatible result for a compatible sample.

Subpart E—Patient Test Management

§ 493.201 Condition: Patient test management.

The laboratory must maintain and employ a system that provides for proper receipt and processing of patient specimens and accurate reporting of patient test results.

(a) *Standard; Procedures for specimen submission.* The laboratory must have written policies and procedures regarding collection, labeling, preservation or fixation, and transportation of specimens that, when followed, assure accurate and reliable test results. The laboratory must follow these practices and make available to clients instructions for specimen collection, handling, preservation and transportation as a means of ensuring that specimens submitted are satisfactory for testing.

(b) *Standard; Specimen requisition.* The laboratory must perform tests only at the written or electronic request of an authorized person and maintain records of test requistions for at least two years. The laboratory must assure that the requisition includes—

(1) The patient's name or other method of specimen identification to assure accurate reporting of results;

(2) The name or other suitable identifier of the person who ordered the test or the name of the clinical laboratory submitting the specimen;

(3) The date of specimen collection and the time of specimen collection, if pertinent;

(4) The source of specimen and type of test ordered; and

(5) For cytology specimens—

(i) Patient age;

(ii) Pertinent clinical information; and

(iii) For Pap smears, the last menstrual period and indication whether the patient is at risk for developing cervical cancer or its presursors.

(c) *Standard; Specimen records.* The laboratory must maintain a system of reliable specimen identification, document each step in processing patient specimens and testing to assure accurate test reporting, and retain records of patient testing for at least two years. This system must provide—

(1) The laboratory number or other identification of the specimen;

(2) The patient's name or other method of specimen identification to assure accurate reporting of results;

(3) The name or other suitable identifier of the person who ordered the test or the name of the clinical laboratory submitting the specimen;

(4) The date of specimen collection; the time of specimen collection, if pertinent; and the date of specimen receipt in the laboratory;

(5) The source of specimen and type of test ordered;

(6) The condition or disposition of specimens that do not meet the laboratory's criteria for specimen acceptability; and

(7) The records and dates of performance of each step in patient testing leading to the final report to assure proper identification and reliable reporting of test results.

(d) *Standard; test report.* The laboratory report must be sent promptly to the authorized person or laboratory that initially requested the test and a legally reproduced record of each test result must be preserved by the testing laboratory for a period of at least two years after the date of reporting. For cytology, test reports must be maintained at least ten years after the date of reporting.

(1) The legally reproduced copies of test reports must be filed in the

laboratory in a manner that permits ready identification and accessibility.

(2) The results of transcripts of laboratory tests or procedures must be released only to authorized persons.

(3) Pertinent "normal" ranges, as determined by the laboratory performing the tests, must be available to the authorized person who ordered or who utilizes the test results.

(4) The laboratory must establish special reporting procedures for potential life-threatening laboratory results or panic values. In addition, the laboratory must immediately alert the individual requesting the test when any result indicating a life-threatening condition is obtained.

(5) The laboratory must indicate on the test report any information regarding the condition or disposition of specimens that do not meet the laboratory's criteria for acceptability.

(6) The laboratory must upon request make available to clients a list of test methods employed by the laboratory and a basis for the listed "normal" ranges. In addition, information that may affect the interpretation of test results, such as test interferences, if known, and performance claims including, where applicable, detection limits, sensitivity, specificity, accuracy, precision and validity of test measurement and other pertinent test characteristics must be provided to the individual requesting the test. Updates on testing information must be provided to clients whenever changes occur that affect the test results or interpretation of test results.

(7) The test report must include the name and address of each laboratory performing each test.

(e) *Standard; referral of specimens.* The laboratory may refer specimens for testing only to a laboratory that is Medicare-approved or CLIA-licensed (or exempted from CLIA-licensure) for the appropriate speciality or subspecialty.

(1) The authorized person who orders a test or procedure must be notified by the referring laboratory of the name and address of each laboratory that performs a laboratory test.

(2) If the referring laboratory interprets or revises in any way the test results provided by the testing laboratory, the referring laboratory must notify the authorized person who requested the test or procedure and the testing laboratory. The referring laboratory must maintain a legally reproduced copy of such interpretations, alterations or revisions and of the notice to the client and testing laboratory.

(3) The referring laboratory may permit each testing laboratory to send the test result directly to the authorized person who initially requested the test. In such case, the referring laboratory must maintain a legally reproduced copy of each testing laboratory's report.

(4) The test report must include the name and address of each testing laboratory.

Subpart F—Quality Control

§ 493.221 Condition: General quality control.

The laboratory must impose and practice quality control procedures that provide and assure accurate, reliable and valid test results and reports and that meet the standards in §§ 493.223 through 493.239 of this subpart.

§ 493.223 Standard; Facilities.

The laboratory must be constructed, arranged and maintained to ensure adequate space, facilities and essential utilities for the performance and reporting of tests.

§ 493.225 Standard; Adequacy of methods and equipment.

The laboratory must employ methodologies and equipment that provide accurate and reliable test results and reports.

(a) The laboratory must have sufficient equipment and instruments to perform the type and volume of testing offered by the laboratory.

(b) The instrumentation used must be capable of providing test results within the laboratory's stated performance characteristics. These performance characteristics include detection limits, precision, accuracy, specificity, sensitivity as well as freedom from interferences and related test variables.

(c) Test methods are performed in a manner that permits the laboratory to provide test results within the laboratory's stated performance characteristics, including precision, accuracy, sensitivity, specificity, detection limits, as well as freedom from interference and related test variables. In determining test methodology, the laboratory must consider factors such as utilizing the appropriate test system to give the performance characteristics specified by the laboratory, assuring a statistically valid number of counts to give accurate and reliable test results for systems such as cell counters, radioactive counters, spectrophotometers and other equipment for which this is a critical variable.

(d) The laboratory must have adequate systems in place to report results in an accurate and reliable manner and within the time frames established by the laboratory.

§ 493.227 Standard; Temperature and humidity monitoring.

Temperature and humidity must be maintained and monitored within an acceptable range of values to assure—

(a) Proper storage of specimens, reagents and supplies; and

(b) Accurate and reliable test performance and reporting.

§ 493.229 Standard; Labeling of testing supplies.

(a) Reagents, solutions, culture media, controls and calibrators and other materials must be labeled to indicate—

(1) Identity, and, when significant, titer, strength or concentration;

(2) Recommended storage requirements; and

(3) Preparation or expiration date and other pertinent information.

(b) The laboratory may not use materials that have exceeded their expiration date, are of substandard reactivity, or have deteriorated.

§ 493.231 Standard; Procedure manual.

(a) Personnel examining specimens and performing related procedures within a specialty or subspecialty have available in the testing area complete written instructions and descriptions related to—

(1) The current analytical methods used by personnel;

(2) Specimen processing procedures;

(3) Preparation of solutions, reagents, and stains;

(4) Calibration procedures;

(5) Microscopic examination;

(6) Quality control procedures;

(7) Quality assurance policies;

(8) Limitations in methodologies;

(9) Actions to be followed when quality control results deviate from expected values or patterns;

(10) Procedures for reporting patient results;

(11) Pertinent literature references; and

(12) Alternative methods for performing tests or storing the test specimens in the event that a test system becomes inoperable.

(b) Procedures and changes in procedures must be approved and signed and dated by the current director of the laboratory.

(c) The laboratory must maintain, for a period of up to two years, records of each procedure it uses and the span of time the procedure was in use.

(d) Textbooks may be used as supplements to these written descriptions but may not be used in their place.

§ 493.233 Standard; Equipment maintenance and function checks.

The laboratory establishes and employs policies and procedures for—

(a) The proper maintenance of equipment, instruments and test systems by—

(1) Defining its preventive maintenance program for each instrument and piece of equipment based on the manufacturer's instructions. If the laboratory choose to perform preventive maintenance less frequently than the manufacturer recommends or the manufacturer does not specify a frequency, the laboratory must document the validity of its preventive maintenance program; and

(2) Documenting the performance of its preventive maintenance program.

(b) Performing function checks on equipment, including spectrophotometers, radioactive counters, cell counters, automated analyzers, centrifuges, densitometer and data processors to assure proper performance and the production of accurate and reliable test results by—

(1) Calibrating, recalibrating, or rechecking each instrument or device or test system at least once each day of use;

(2) Performing the function checks with at least the frequency specified by the manufacturer unless the laboratory has data that document that a lesser frequency will not alter the performance characteristics of the system. The laboratory must establish performance criteria for each test or procedure if the manufacturer of the test system or equipment has not specified the type of maintenance and function checks to perform; and

(3) Performing all necessary baseline or background checks on radioactive counters, cell counters, refractometers, spectrophotometers and other equipment requiring such measurements. The laboratory may not report test results unless the background or baseline checks are within acceptable limits.

§ 493.235 Standard; Validation of methods

The laboratory must have a written protocol and documentation for the validation of each method that verifies that the method produces test results within the laboratory's stated performance characteristics.

(a) The linearity of each quantitative method, if applicable, must be established.

(b) In the case of qualitative and screening tests, the laboratory must establish and define the basis for specifying reportable results as positive, negative, degree of reactivity, or in accordance with another reporting system. The laboratory must follow these established limits in reporting test results.

(c) A method used by the laboratory must be validated before it is used and documentation of the validation must be available for the period during which the procedure is used by the laboratory or for two years, whichever is longer.

(d) The laboratory must have documentation of the level of precision, accuracy, sensitivity, and specificity that the laboratory claims for each method in use and for which it reports results.

(e) The laboratory must maintain documentation verifying that test systems perform according to the laboratory's specifications. This documentation must be available to the authorized persons ordering or receiving test results.

(f) The laboratory must define the basis for reporting patient test results.

(g) The laboratory may not report patient test results if it does not have data to verify the specified test performance characteristics and reporting limits.

§ 493.237 Standard; Frequency of quality control.

The laboratory must perform quality control at the frequencies specified in this section unless another frequency is specified in §§ 493.241 through 493.315 or HHS approves a lesser frequency in Appendix C of the State Operational Manual (HCFA Pub. 7).

(a) The laboratory must establish and document a schedule for calibration, recalibration or calibration verification of each automated and manual method.

(1) The laboratory must perform procedural calibration or recalibration at least once every six months using a complete range of calibrators and, in addition, when any of the following occur:

(i) A complete change of reagents for a procedure is introduced. If all of the reagents for a test are packaged together, the laboratory is not required to recalibrate for each package of reagents, provided the reagents are received in the same shipment and contain the same lot number;

(ii) There is major preventive maintenance or replacement of critical parts, such as an excitor lamp;

(iii) Controls begin to reflect an unusual trend or are outside of acceptable limits;

(iv) The manufacturer's recommendation specify more frequent recalibration; or

(v) The laboratory's established schedule requires more frequent recalibration.

(2) The number of calibrators the laboratory uses to verify calibration (recalibration) varies by method—

(i) For methods in which a linear relationship exists between concentration and direct instrument reading, at least three points and a zero or minimum value are required; and

(ii) For methods in which a nonlinear relationship exists between concentration and direct instrument readings, at least five points and a zero or minimum value are required.

(3) The calibrators must cover the entire range of expected patient values to be reported for the test procedures.

(4) For patient values above the maximum calibration point or below the minimum calibration point—

(i) The laboratory must report the patient results as greater than the upper limit or less than the lower limit or an equivalent designation; or

(ii) The laboratory must dilute the sample and the diluted sample must fall within the linear range of the method if results are to be reported. If a dilution method is employed, the laboratory must be able to provide evidence that the dilution process can yield accurate, reliable and valid test results.

(b) For quantitative tests, the laboratory must include two calibrator samples, one calibrator sample and one control sample, or two control samples in each run of unknown samples when these reference samples are available.

(1) A run is an interval within which the accuracy and precision of a measuring system is expected to be stable but must not exceed a period of 24 hours and must not exceed the manufacturer's specification for including controls.

(2) The laboratory must use the calibrator samples, the control samples, or combination thereof, and monitor both the abnormal and normal range of reportable patient values.

(i) If calibrators are not used, two controls of different concentrations must be used;

(ii) If controls are not used, two calibrators of different concentrations must be used. Two separate dilutions from a stock calibrator must be prepared or a calibrator and a sample spiked with a calibrator must be used;

(iii) Other exceptions apply as HHS approves in Appendix C of the State Operations Manual (HCFA Pub. 7); and

(iv) If calibrators and controls are not available, the laboratory must have a mechanism to assure the quality,

accuracy and precision of the test results.

(3) A laboratory does not have to meet the requirements of this section when calibrators and controls are not available because of the nature of the instruments or the tests performed.

(4) For qualitative tests, the laboratory must include a positive and negative control with each run of specimens unless otherwise specified by HHS under the provision of these regulations.

(c) The laboratory must determine its statistical limits for each lot number of controls through repetitive testing. The laboratory may use the manufacturer's limits, provided they are verified by the laboratory, represent the actual within-laboratory analytical range expected and the stated limits correspond to the methods employed by the laboratory. Acceptable limits for unassayed materials must be established by the laboratory through concurrent testing with an assayed or laboratory-defined control material.

(d) Initially, the laboratory must check each batch or shipment of reagents, discs, stains, antisera and identification system (systems using two or more substrates and antigen detection systems) for positive and negative reactivity.

(e) Each day of use, unless otherwise specified in this subpart of Appendix C of the State Operations Manual (HCFA Pub. 7), the laboratory must test staining materials for intended reactivity by concurrent application to smears of microorganisms with predictable staining characteristics.

(f) Each day of use, the laboratory must test direct antigen detection systems using positive and negative control organisms that evaluate both the extraction and reaction phases.

(g) The laboratory must check each batch or shipment of media for sterility, ability to support growth and, if appropriate, selectivity/inhibition and/or biochemical response. The laboratory may use a commercial manufacturer's quality control checks of media if the laboratory has documentation to verify that the manufacturer has used the quality assurance practices that have been approved by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7). The laboratory must document that the physical characteristics of the media are not compromised and report any deterioration in the media to the manufacturer. The laboratory must follow the manufacturer's specifications for using the media and be responsible for the test results.

(h) A batch of media (solid or liquid) must—

(1) Consist of all tubes, plates, or containers of medium prepared at the same time and in the same laboratory; or

(2) If received from an outside source or commercial supplier, all of the plates, tubes or containers must have the same lot numbers and be received in a single shipment.

(i) Results must not be reported unless all controls are within acceptable limits.

§ 493.239 Standard; Remedial actions.

The laboratory must establish and employ policies and procedures for actions to be taken when—

(a) Test systems do not meet established criteria including—

(1) Quality control results are outside of acceptable limits;

(2) Equipment or methodologies perform outside of established operating limits;

(3) Test results are outside of acceptable linear limits; and

(4) Proficiency test results are not within acceptable limits;

(b) It cannot test samples within specified times that it has established. The laboratory must establish and follow criteria for referring or for storing specimens. The laboratory must notify the authorized person who ordered the test if the laboratory cannot run a specimen because test results may be affected;

(c) It detects errors in the reported patient results. The laboratory must establish and follow policies for correcting reporting errors and notify the authorized person ordering and utilizing the test results promptly; or

(d) It does not report test results within its established timeframes.

§ 493.240 Standard; Quality control—records.

The laboratory must document all quality control activities and retain records for at least two years.

(a) The laboratory must maintain records of the following—

(1) Preventive maintenance activities;

(2) Equipment function checks;

(3) Procedural calibrations; and

(4) Validation procedures.

(b) The laboratory must maintain records of each step in the processing and testing of quality control samples to assure that the quality control samples are tested in the same manner as patient samples; the laboratory must document quality control results.

(c) The laboratory must maintain records of remedial activities taken when test systems do not meet established criteria and samples cannot be tested within timeframes established by the laboratory.

§ 493.241 Condition: Quality control—specialties and subspecialties.

The laboratory must establish and follow policies and procedures for an acceptable quality control program that include verification and assessment of accuracy, measurement of precision and detection of error for all analyses and procedures performed by the laboratory. In addition to the general requirements specified in §§ 493.221 through 493.240, the laboratory must meet the applicable requirements of §§ 493.243 through 493.315 for each specialty and subspecialty for which the laboratory is licensed (CLIA) or approved (Medicare and Medicaid). Failure to meet any of the applicable conditions in §§ 493.243 through 493.315 will result in the loss of approval, licensure, or letter of exemption for the entire specialty to which the condition applies; failure to meet any of the standards in §§ 493.243 through 493.315 will result in the loss of approval, licensure or exemption from licensure for the subspecialty to which the standard applies.

§ 493.243 Condition: Microbiology.

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and in §§ 493.245 through 493.253 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of microbiology.

§ 493.245 Standard; Bacteriology.

To meet the quality control requirements for bacteriology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must check positive and negative reactivity with control organisms—

(1) Each time of use for fluorescent stains and DNA probes based on radioisotopes methods;

(2) Each day of use for catalase, coagulase, and oxidase reagents;

(3) Each week of use for Gram and acid-fast stains, bacitracin, optochin, ONPG, XV, strips, discs and X, V discs or strips; and

(4) Each month of use for antisera.

(b) For antimicrobial susceptibility tests, the laboratory must check each new batch of media and each lot of antimicrobial discs before, or concurrent with, initial use, using approved reference organisms.

(c) The laboratory's zone sizes or minimum inhibitory concentration for reference organisms must be within established limits.

(d) Each day tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure, unless the laboratory can establish precision and accuracy to be within the limits established by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

§ 493.247 Standard; Mycobacteriology.

To meet the quality control requirements for mycobacteriology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) Each day of use, the laboratory must check the iron uptake test with at least one acid-fast organism that produces a positive reaction and with an organism that produces a negative reaction and check all other reagents used for Mycobacteria identification with at least one acid-fast organism that produces a positive reaction.

(b) The laboratory must check fluorescent stains for positive and negative reactivity each time of use.

(c) The laboratory must check each week of use acid-fast stains with an acid-fast organism that produces a positive reaction.

(d) For susceptibility tests performed on *Mycobacterium tuberculosis* isolates, the laboratory must check the procedure each week of use with a control strain of *Mycobacterium tuberculosis*.

§ 493.249 Standard; Mycology.

To meet the quality control requirements for mycology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) Each day of use, the laboratory must check the nitrate reagent with a peptone control.

(b) Each week of use, the laboratory must check acid-fast stains for positive and negative reactivity.

(c) For susceptibility tests, the laboratory must test each drug each day of use with at least one control strain that is susceptible to the drug. The laboratory must establish control limits.

§ 493.251 Standard; Parasitology.

To meet the quality control requirements for parasitology, the laboratory must comply with the applicable requirements of §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available a reference collection of slides, photographs or gross specimens for identification of parasites available and use it in the laboratory for appropriate comparison with diagnostic specimens.

(b) The laboratory must use a calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(c) Each month of use, the laboratory must check permanent stains using fecal samples.

§ 493.253 Standard; Virology.

To meet the quality control requirements for virology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available host systems for the isolation of viruses and test methods for the identification of viruses that cover the entire range of viruses that are etiologically related to clinical diseases for which services are offered.

(b) The laboratory must maintain records that reflect the systems used and the reactions observed.

(c) In tests for the identification of viruses, the laboratory must employ uninoculated cell or cell substrate controls to detect erroneous identification results.

§ 493.255 Condition: Diagnostic immunology.

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.257 through 493.259 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of diagnostic immunology.

§ 493.257 Standard; Syphilis serology.

To meet the quality control requirements for syphilis serology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (e) of this section.

(a) For laboratories performing syphilis testing, the equipment, glassware, reagents, controls, and techniques for tests for syphilis must conform to manufacturers' specifications.

(b) The laboratory must run serologic tests on unknown specimens concurrently with a positive serum control, known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) The laboratory must employ controls for all test components to ensure reactivity and uniform dosages.

(d) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(e) All facilities transfusing blood and blood products or serving as referral laboratories for these facilities must meet the syphilis serology testing requirements of 21 CFR 640.5(a).

§ 493.259 Standard; General immunology.

To meet the quality control requirements for general immunology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must run serologic tests on unknown specimens concurrently with a positive serum control, known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(b) The laboratory must employ controls for all test components (antigens, complement, erythrocyte indicator systems, etc.) to ensure reactivity and uniform dosages.

(c) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(d) All facilities transfusing blood and blood products or serving as referral laboratories for these facilities must meet:

(1) The HIV testing requirements of 21 CFR 610.45; and

(2) Hepatitis testing requirements of 21 CFR 610.40.

§ 493.261 Condition: Chemistry.

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.263 through 493.267 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of chemistry.

§ 493.263 Standard; Routine chemistry.

To meet the quality control requirements for routine chemistry, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) and (b) of this section.

(a) For blood gas analyses, the laboratory must include two calibrators and a control material each eight hours of testing in addition to including a calibrator or control each time patients are tested.

(b) For urinalysis qualitative or screening tests, the laboratory must include a positive control each day of testing to check the reactivity of each constituent.

§ 493.265 Standard; Endocrinology.

To meet the quality control requirements for endocrinology, the laboratory must comply with the applicable requirements contained in §§ 493.21 through 493.240.

§ 493.267 Standard; Toxicology.

To meet the quality control requirements for toxicology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240.

§ 493.269 Condition: Hematology.

To meet the quality control requirements for hematology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (b) of this section.

(a) For each eight hours of operation, the laboratory must have two levels of control except for manual cell counts, in which one level of control is required for each eight hours of operation.

(b) The laboratory must run tests for coagulation in duplicate.

§ 493.270 Condition: Pathology.

The laboratory must meet the applicable quality control requirements in §§ 493.221 through 493.240 and §§ 493.271 through 493.274 for the subspecialties for which it is Medicare or Medicaid approved or CLIA-licensed under the specialty of pathology.

§ 493.271 Standard; Cytology.

To meet the quality control requirements for cytology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and paragraphs (a) and (h) of this section.

(a) The laboratory must assure that—

(1) All gynecologic smears are stained using a Papanicolaou staining method;

(2) Gynecologic and non-gynecologic specimens are stained separately; and

(3) Staining solutions are discarded or filtered after staining body fluids.

(b) The individual providing technical supervision of cytology must assure that—

(1) All genecological smears interpreted to be in the "suspicious" or positive category are confirmed by the technical supervisor in cytology. The report must be signed to reflect the review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor.

(2) All nongynecological cytological preparations, positive and negative, are reviewed by the technical supervisor in cytology. The report must be signed to reflect technical supervisory review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor.

(3) Provision is made for documenting and evaluating each cytotechnologist's side examination performance, including feedback on the suspicious or abnormal cases referred to the technical supervisor in cytology, and on each cytotechnologist's performance evaluation through the rescreening of negative cases.

(c) The laboratory must establish and follow a program designed to detect errors in the performance of cytological examinations and the reporting of results.

(1) The laboratory must establish a program that includes on a regular basis a review of slides screened by each individual responsible for the examination of slides; records of initial examinations and rescreening results must be available. The review must meet the requirements of paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) At least ten percent of the gynecologic cases reviewed by each cytotechnologist interpreted to be negative must be rescreened by a second cytotechnologist or the technical supervisor in cytology before reporting patient results; or

(ii) All gynecologic cases that are interpreted to be negative and that are from patients who are identified as having a high probability of developing cervical cancer, as defined in § 493.201(b)(5)(iii), must be rescreened by a second cytotechnologist or the technical supervisor before reporting patient results.

(2) The laboratory must compare clinical information with cytology reports and, for all abnormal cytology reports, must compare the cytology report with the histopathology report, if available, and determine the causes of any discrepancies.

(3) The laboratory must review all prior cytologic specimens, if available, for each abnormal cytology result.

(4) The laboratory must establish and document an annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patients reported by diagnosis, false-negative and false-positive rates, number of unsatisfactory specimens submitted by each physician or laboratory and number of complaints received from individuals ordering or receiving test reports.

(5) The laboratory must evaluate each cytotechnologist's individual case reviews against its overall statistical rates, document any discrepancies, including reasons for the deviation, and document corrective action, if appropriate.

(d) The laboratory report must—

(1) Distinguish between inadequate smear and negative result;

(2) Contain narrative descriptions for any abnormal or suspicious results;

(3) Include the presence of endometrial cells if endometrial cells are present out of cycle;

(4) Indicate evidence of viral infection if present; and

(5) Contain appropriate provisions for follow-up recommendations.

(e) Corrected reports issued by the laboratory must indicate basis for correction.

(f) The laboratory must retain all negative slides for five years from the date of examination.

(g) The laboratory must retain all abnormal slides and slides from patients with a history of suspicious or abnormal cytology results for ten years from the date of examination.

§ 493.273 Standard; Histopathology.

To meet the quality control requirements for histopathology, a laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and paragraphs (a) through (c) of this section.

(a) The laboratory must control all special stains for intended level of reactivity by use of positive slides and records must document the quality control checks of the stain materials.

(b) The laboratory must retain stained slides at least ten years from the date of examination and retain specimen blocks at least two years from the date of examination.

(c) The laboratory must retain remnants of tissue specimens in a fixative solution until the portions submitted for microscopic examination have been examined and a diagnosis made by an individual qualified under § 493.403(b)(2) of this part. In addition, an individual who meets the requirements of § 493.403(b)(3) may examine and provide reports for specimens for skin pathology; an individual meeting the requirements of § 493.407(b)(4) may examine and provide reports for specimens for oral pathology.

(d) The laboratory must utilize acceptable terminology of a recognized system of disease nomenclature in reporting results.

(e) The laboratory must report results of all biopsy-confirmed cases of cervical cancer to an established cancer registry.

§ 493.274 Standard; Oral pathology.

To meet the quality control requirements for oral pathology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and 493.273.

§ 493.275 Condition: Radiobioassay.

To meet quality control requirements for radiobioassay, the laboratory must meet the specific requirements of §§ 493.221 through 493.240 of this subpart.

§ 493.277 Condition: Histocompatibility.

In addition to meeting the requirements for general quality control in §§ 493.221 through 493.240, for quality control for general immunology in § 493.259 of this subpart and for immunohematology in § 493.281 of this subpart, the laboratory must comply with the applicable requirements in paragraphs (a) through (d) of this section.

(a) For renal allotransplantation the laboratory must meet requirement of paragraphs (a)(1) through (23) of this section.

(1) The laboratory must have available and follow criteria for selecting appropriate patient serum samples for crossmatching;

(2) The laboratory must have available results of final crossmatches before an organ or tissue is transplanted.

(3) The laboratory must have available and follow criteria for the technique used in crossmatching;

(4) The laboratory must have available and follow criteria for preparation of donor lymphocytes for crossmatching.

(5) The laboratory must have available and follow criteria for reporting crossmatch results.

(6) The laboratory must have available serum specimens for all potential transplant recipients at initial typing, for periodic screening, for pretransplantation crossmatch and following sensitizing events, such as transfusion and transplant loss.

(7) The laboratory's storage and maintenance of both recipient sera and reagents must—

(i) Be at an acceptable temperature range for sera and components;

(ii) Use a temperature alarm system and have an emergency plan for alternate storage; and

(iii) Be well-organized with all specimens properly identified and easily retrievable.

(8) The laboratory's reagent typing sera inventory (applicable only to locally constructed trays) must indicate source, bleeding date and identification number, and volume remaining.

(9) The laboratory must properly label and store cells, complement, buffer, dyes, etc.

(10) The laboratory must type all potential transplant recipient cells.

(11) The laboratory must type cells from organ donors referred to the laboratory.

(12) The laboratory must have available and follow criteria for the preparation of lymphocytes for HLA–A, B and DR typing.

(13) The laboratory must have available and follow criteria for selecting typing reagents, whether locally or commercially prepared.

(14) The laboratory must have available and follow criteria for the assignment of HLA antigens.

(15) The laboratory's reagent tray or trays for typing recipient and donor cells must be adequate to define all HLA–A, B and DR specificities as required to determine splits and cross-reactivity.

(16) The laboratory must have a written policy that it follows that establishes when antigen redefinition and retyping are required.

(17) The laboratory must screen recipient sera for preformed antibodies with a suitable lymphocyte panel that assures that—

(i) Potential transplant recipient serum are screened for HLA–A and B content; and

(ii) Screening is performed on initial typing of living related donors and cadaver organs. The laboratory must also screen at monthly intervals after initial screening and following sensitizing events.

(18) The laboratory must use a suitable cell panel for screening patient sera (antibody screen), a screen that contains all the major HLA specificities and common splits—

(i) If the laboratory does not use commercial panels, it must maintain a list of individuals for fresh panel bleeding; and

(ii) If the laboratory uses frozen panels, there must be a suitable storage system.

(19) The laboratory must use testing such as the mixed lymphocyte culture to determine cellularly defined antigens.

(20) (i) If the laboratory reports the patient's ABO blood grouping and Rh typing, it must perform the testing in accordance with § 493.281 of this subpart.

(ii) If the laboratory performs an ABO blood grouping to purify cell population, a control for the ABO must be included.

(21) The laboratory must include positive and negative controls on each tray. The laboratory must determine the reactivity of cell panels used for antibody detection by testing the various components of the antigen panel with positive and negative controls when the panel is used. The entire panel does not have to be tested at one time.

(22) The laboratory must, at least once each month, give each individual performing tests a previously tested specimen as an unknown to verify his or her ability to reproduce test results. The laboratory must maintain records of the results for each individual.

(23) The laboratory must participate in at least one national or regional cell exchange program, if available, or develop an exchange system with another laboratory in order to validate interlaboratory reproducibility.

(b) For laboratories performing only transfusions, bone marrow transplants, and other nonrenal transplantation, the laboratory must meet all the requirements specified in this section except for the performance of mixed lymphocyte cultures.

(c) For laboratories performing only disease-associated studies, the laboratory must meet all the requirements specified in this section except for the requirements for those concerning the performance of mixed lymphocyte cultures.

(d) For laboratories performing tests for organ transplantation, the laboratory must test the donor for HIV reactivity using the same protocols as required under § 493.301 of this part for the transfusion of blood and blood products, unless the organ recipient (or an individual authorized to act on his or her behalf) waives the tests because of medical circumstances.

§ 493.279 Condition: Medical cytogenetics.

To meet the quality control requirements for cytogenetics, the laboratory must comply with the applicable requirements of §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory examination of X and Y chromatin counts must be based on an examination of an adequate number of cells.

(b) The laboratory must have records that document the number of cells counted, the number of cells karyotyped, the number of chromosomes counted for each metaphase spread, and the quality of the banding; that the resolution is sufficient to support the reported results; and that an adequate number of karyotypes are prepared for each patient.

(c) The laboratory also must have policies and procedures for assuring an adequate patient sample identification

during the process of accessioning, photographing or other image reproduction technique, cell preparation and photographic printing, and storage and reporting of results or photographs.

(d) The laboratory report must include the summary and interpretation of the observations and number of cells counted and the use of appropriate nomenclature.

§493.281 Condition: Immunohematology.

To meet the quality control requirements for immunohematology, the laboratory must comply with the applicable requirements in §§ 493.221 through 493.240 and with paragraphs (a) through (d) of this section.

(a) The laboratory must perform ABO and Rh_o(D) grouping, antibody detection and identification and compatibility testing in accordance with 21 CFR Part 606 (with the exception of 21 CFR 606.20a, Personnel) and 21 CFR 640 et seq.

(b) The laboratory must perform ABO grouping by testing unknown red cells with anti-A and anti-B grouping serums. For confirmation of ABO grouping, the unknown serum must be tested with known A_1 and B red cells.

(c) The laboratory must determine the Rh_o(D) group by testing unknown red cells with anti-D (anti-Rh_o) blood grouping reagent.

(d) The laboratory must employ a control system capable of detecting false positive Rh test results.

§493.301 Condition: Transfusion services and bloodbanking.

If a facility provides services for the transfusion of blood and blood products, the facility must ensure that there are facilities for procurement, safekeeping and transfusion of blood and blood products and that blood products provided are readily available. This condition is met by complying with the standards in §§ 493.303 through 493.315 of this subpart.

§493.303 Standard; Immunohematological testing, processing, storage and transmission of blood and blood products.

In addition to the requirements in this section, the facility must also meet the applicable quality control requirements in §§ 493.221 through 493.240 of this part.

(a) Blood and blood product collection, processing and distribution must comply with 21 CFR Part 640 and 21 CFR Part 606, and the testing laboratory must be Medicare-approved.

(b) Dating periods for blood and blood products must conform to 21 CFR 610.53.

§493.305 Standard; Facilities.

The facility must maintain, at a minimum, proper blood storage facilities under the adequate control and supervision of the pathologist or other doctor of medicine or osteopathy meeting the qualifications in § 493.403(b)(7).

§493.307 Standard; Arrangement for services.

In the case of services provided outside the blood bank, the facility must have an agreement reviewed and approved by the director that governs the procurement, transfer and availability of blood.

§493.309 Standard; Provision of testing.

There must be provision for prompt blood grouping, antibody detection, compatibility testing and for laboratory investigation of transfusion reactions, either through the facility or under arrangement with an approved facility on a continuous basis, under the supervision of a pathologist or other doctor of medicine or osteopathy.

§493.311 Standard; Storage facilities.

The blood storage facilities must have an adequate temperature alarm system that is regularly inspected.

§493.313 Standard; Retention of transfused blood.

According to the facility's established procedures, samples of each unit of transfused blood must be retained for further testing in the event of reactions. The facility must promptly dispose of blood not retained for further testing that has exceeded its expiration date.

§493.315 Standard; Investigation of transfusion reactions.

The facility, according to its established procedures, must promptly investigate all transfusion reactions occurring in its own facility for which it has investigational responsibility and make recommendations to the medical staff regarding improvements in transfusion procedures. The facility must document that all necessary remedial actions are taken to prevent future recurrences and that all policies and procedures are reviewed to assure that they are adequate to ensure the safety of individuals being transfused within the facility.

Subpart G—Personnel

§493.401 Condition: Laboratory director.

The laboratory must be directed by an individual who is qualified to provide overall management and supervision of laboratory services.

§493.403 Standard; Laboratory director qualifications.

The laboratory director must be qualified to provide day-to-day management of the laboratory personnel and test performance.

(a) The director must be—

(1) A pathologist or other doctor of medicine or osteopathy;

(2) A laboratory specialist with a doctoral degree from an accredited university in physical, chemical or biological sciences;

(3) An individual who before [the effective date of these regulations] was properly qualified and served as a laboratory director in accordance with the requirements specified in Appendix A to this part;

(4) An individual who qualifies under State law to direct the laboratory; or

(5) An individual who has been approved by a certification board acceptable to HHS.

(b) If the laboratory performs services in any of following specialties or subspecialties, specific qualifications are required for the individual providing technical supervision.

(1) Cytology—In the case of tests limited to cytology, the individual is a physician who—

(i) Is certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology;

(ii) Is certified by the American Society of Cytology; or

(iii) Possesses qualifications that are equivalent to those required for certification by the Boards specified in paragraph (b)(1)(i) of this section; and

(iv) Has had three months' experience in cytology.

(2) Histopathology—In the case of tests limited to histopathology, the individual is a physician who meets the requirements of paragraphs (b)(1)(i) or (b)(1)(iii) of this section.

(3) Dermatopathology—In the case of tests limited to dermatopathology, the individual—

(i) Is a physician who meets the requirements of paragrpah (b)(1)(i) or (b)(1)(iii) of this section;

(ii) Is certified in dermatopathology by the American Board of Dermatology, the American Osteopathic Board of Dermatology, the American Board of Pathology, or the American Osteopathic Board of Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification as specified by the Boards specified in paragraph (b)(2)(i) of this section.

(4) Oral pathology—In the case of tests limited to oral pathology, the individual—

(i) Is a physician who meets the requirements of paragraph (b)(1)(i) or (b)(1)(iii) of this section;

(ii) Is certified in oral pathology by the American Board of Oral Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification as specified by the Boards specified in paragrah (b)(3)(i) of this section.

(5) Histocompatibility—In the case of tests limited to histocompatibility, the individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Has had four years of experience in immunology, two of which have been in histocompatibility testing.

(6) Cytogenetics—The individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Has had four years of experience in immunology or genetics, two of which have been in cytogenetics.

(7) Transfusion services and blood banking—The individual is a pathologist or other doctor of medicine or osteopathy with training and experience in transfusion services.

§ 493.405 Standard; Laboratory director responsibilities.

The laboratory director must be responsible for the overall technical supervision of the laboratory personnel, for the performance and reporting of testing procedures and for assuring compliance with the applicable regulations.

(a) The laboratory director must provide technical supervision of the laboratory services and assure that technical supervision is provided by individuals as required under § 493.403(b).

(b) The laboratory director must—

(1) Assure that tests, examinations and procedures are properly performed, recorded and reported;

(2) Assure that the laboratory maintains an ongoing quality assurance program;

(3) Assure that when tests are being performed there is a supervisor on the premises who meets the qualifications of § 493.409; and

(4) Assure compliance with the applicable regulations.

(c) The laboratory director must ensure that the staff—

(1) Has the appropriate education, experience and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided;

(3) Receives regular in-service training appropriate for the type and complexity of the laboratory services offered; and

(4) Maintains competency to perform test procedures and report test results promptly and proficiently.

§ 493.407 Condition: Laboratory supervision.

(a) Laboratory services must be supervised by an individual who meets the requirements of this subpart and is on the laboratory premises at all times when tests are being performed.

(b) Exception: When there is an emergency outside regularly scheduled hours of duty, an individual who qualifies as a supervisor under this section is not required to be on the premises, provided that the supervisor reviews the emergency test results during the next duty period and that a record is maintained to reflect the actual review.

§ 493.409 Standard; Laboratory supervisor qualifications.

The laboratory supervisor is qualified to provide onsite day-to-day supervision of laboratory test performance and test reporting. The supervisor—

(a) Qualifies as a laboratory director under § 493.401 of this part;

(b) Has earned a bachelor's degree in medical technology from an accredited college or university;

(c) Has successfully completed three years of academic study (a minimum of 90 semester hours or equivalent) in an accredited college or university that met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by HHS and has successfully completed a course of training of at least 12 months in such a school of medical technology;

(d) Has earned a bachelor's degree in one of the chemical, physical, or biological sciences and, in addition, has at least one year of pertinent full-time laboratory experience, training, or both, in the specialty or subspecialty in which the individual performs tests;

(e) Has successfully completed three years (90 semester hours or equivalent) in an accredited college or university with the following distribution of courses:

(1) *For those whose training was completed before September 15, 1963.* At least 24 semester hours in chemistry and biology courses of which:

(i) At least six semester hours were in inorganic chemistry *and* at least three semester hours were in other chemistry courses; and

(ii) At least 12 semester hours were in biology courses pertinent to the medical sciences; *or*

(2) *For those whose training was completed after September 14, 1963.*

(i) Sixteen semester hours in chemistry courses that are acceptable toward a major in chemistry, including at least six semester hours in inorganic chemistry;

(ii) Sixteen semester hours in biology courses that are pertinent to the medical sciences and are acceptable toward a major in the biological sciences; and

(iii) Three semester hours of mathematics; and

(3) Has experience, training, or both, covering several fields of medical laboratory work of at least one year and of such quality as to provide him or her with education and training in medical technology equivalent to that described in paragraphs (a) and (b) of this section;

(f) Met the requirements of Appendix B to this part before [effective date of these regulations]; or

(g) Has qualified as a technologist in a Medicare-approved or CLIA-licensed laboratory before July 1, 1971 in accordance with the requirements of Appendix B to this part.

§ 493.411 Standard; Laboratory supervisor duties.

The laboratory supervisor, under the general direction of the laboratory director, supervises laboratory personnel, test performance, and test reporting.

§ 493.413 Condition: Personnel performing cytology services.

All cytological preparations must be examined by an individual meeting the qualifications of § 493.403(b)(1) or the requirements of § 493.415.

§ 493.415 Standard; Cytotechnologist qualifications.

The cytotechnologist—

(a) Has successfully completed two years in an accredited college or university with a least 12 semester hours in science, eight hours of which are in biology, and

(1) Has had 12 months of training in a school of cytotechnology accredited by an accrediting agency approved by HHS; or

(2) Has received six months of formal training in a school of cytotechnology accredited by an accrediting agency approved by HHS and six months of full-time experience in cytotechnology in a laboratory acceptable to the pathologist who directed the formal six months of training; or

(b) Met the requirements of Appendix C to this part before [the effective date of these regulations].

§ 493.417 Standard; Cytotechnologist duties.

The cytotechnologist must—

(a) Document the gynecologic and non-gynecologic cases examined; and

(b) Record slide interpretation results of each gynecologic and non-gynecologic case reviewed.

§ 493.419 Condition: Technical personnel.

The laboratory staff must be technically competent to perform test procedures and report test results promptly and proficiently.

Subpart H—Quality Assurance

§ 493.451 Condition—Quality assurance.

The laboratory must establish and follow policies and procedures for an ongoing quality assurance program designed to monitor and evaluate quality; identify and correct problems; assure the accurate, reliable and prompt reporting of test results; and assure the adequacy and competency of the staff.

(a) *Standard.* The laboratory must have an ongoing system under which it monitors and evaluates quality control and proficiency testing data for the purpose of substantiating that all tests performed and reported by the laboratory conform to the laboratory's specified performance criteria. These criteria include: precision, accuracy, detection limits, interferences, linearity, sensitivity, specificity, validity and adequacy.

(b) *Standard.* The laboratory must have a mechanism for assuring the accurate and timely reporting of test results. Reporting times must be within the acceptable time periods established by the laboratory.

(c) *Standard.* The laboratory must have a mechanism for assuring that—

(1) All quality control data are reviewed;

(2) Patient test results are not reported when control values are outside the acceptable range established by the laboratory; and

(3) Actions are taken to correct the problems which led to the unsatisfactory quality control results and the corrective actions are documented.

(d) *Standard.* The laboratory must have a mechanism for assuring that corrective action is taken and is documented on all unacceptable proficiency testing results.

(e) *Standard.* The laboratory must have a mechanism to assure that specimens are not tested unless the laboratory's established criteria for acceptability are met and that the authorized person ordering the test is notified of the condition of specimens not meeting the laboratory's criteria for a satisfactory specimen suitable for testing or any limitations on the reliability of the test results.

(f) *Standard.* The laboratory must have policies and procedures for an ongoing program to assure that employees are competent, and maintain their competency, to perform their duties as specified by the laboratory. Policies and procedures may include direct observation of routine patient test performance as well as analysis of unknowns, monitoring the reporting of test results, or other activities identified by the laboratory. The laboratory must evaluate employee performance by—

(1) Retesting specimens of previously analyzed specimens, internal blind proficiency test samples, or external proficiency test samples (that have already been reported to approved proficiency testing programs) to assess the performance levels of each staff member responsible for performing and supervising testing; or

(2) Enrolling in external proficiency testing programs to the extent that there are programs available to cover all analyses performed, to assess an individual's laboratory performance. (The proficiency test samples are in addition to those required in Subpart C of this part.) For cytology, the laboratory may insert into the workload slides from previously reported cases as blind samples or may arrange to exchange cases with another laboratory for the purpose of rescreening slides and comparing results.

(g) *Standard.* The laboratory must have a mechanism for assessing problems identified during quality assurance reviews and discussing them with the staff. The laboratory must take necessary corrective actions to prevent recurrences and make available to HHS documentation of corrective action.

(h) *Standard.* The laboratory must evaluate all data analysis and test reporting systems to assure that the systems perform according to specifications and provide accurate and reliable reporting, transmittal, storage and retrieval of data.

(i) *Standard.* The laboratory must establish and follow policies and procedures to assure that all complaints and problems reported by individuals or facilities who order, receive and use its test results are investigated and that all necessary corrective actions are instituted and documented.

(j) *Standard.* The laboratory must maintain records of its quality assurance program and document all corrective actions taken to remedy problems it has identified.

Subpart I—Inspection

§ 493.501 Condition: Inspection.

HHS or its designees may conduct an unannounced inspection of any laboratory at any time during its hours of operation. HHS may deny approval to a laboratory for a period of at least one year for violation of any of the requirements of this part or of the Social Security Act, subject to the appeal rights specified in Part 498 of this chapter.

(a) *Standard.* The laboratory may be required, as part of this inspection, to—

(1) Test samples (including proficiency testing samples) or perform procedures as HHS requires;

(2) Allow an interview of all employees of the laboratory;

(3) Allow employees to be observed performing tests (including proficiency testing specimens provided by the inspection team), data analysis and reporting; and

(4) Provide copies to HHS of all records and data it requires.

(b) *Standard.* All records and data must be readily accessible and retrievable within a reasonable time frame during the course of the inspection. All records must be available for at least two years unless other time frames are specified in this part or HHS specifies a different interval in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) *Standard.* The laboratory must provide all information and data needed to make a determination of the laboratory's status; this information may be requested before, during or after the inspection.

(d) *Standard.* The laboratory must notify HHS within 30 days of the effective date of all changes in directors, ownership and control, location, test specialties and subspecialties offered, and hours of operation.

(e) *Standard.* The laboratory must successfully participate in an approved proficiency testing program for up to one year before inspection, issuance of a CLIA license (or letter of exemption) or Medicare or Medicaid approval can take place, if HHS so requires. The laboratory must submit the results of the testing to HHS before inspection, approval or licensure of the facility can take place.

(f) *Standard.* HHS may reinspect a laboratory at anytime necessary to evaluate the ability of the laboratory to provide accurate and reliable test results.

Subpart J—CLIA Requirements

§ 493.701 Basis and scope.

(a) This subpart applies to laboratories engaged in the laboratory examination of, or other laboratory procedures relating to, human specimens solicited or accepted in interstate commerce, directly or indirectly, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health, of human beings. All screening procedures are included as well as quantitative testing of specimens for the presence or absence of any substance, pathogen or other analytes.

(b) This subpart does not apply to—

(1) Any laboratory that performs 100 or fewer tests during any calendar year; however, the laboratory must—

(i) Hold an unrevoked or unsuspended letter of exemption for low volume from HHS;

(ii) Provide information to HHS upon request, permit inspections, and make records available as required by § 493.501 of this part for licensed laboratories; and

(iii) Perform testing that HHS has determined poses no significant threat to public health;

(2) Any laboratory operated by a licensed physician, osteopath, dentist, or podiatrist, or group of these individuals in any combination who performs laboratory tests or procedures solely as an adjunct to the treatment of the practitioner's or practitioners' own patients;

(3) Any laboratory performing tests or other procedures solely for the purpose of determining whether to write an insurance contract or determine eligibility or continued eligibility for insurance payments; and

(4) Any laboratory exempted under section 353(1) of the Public Health Service Act.

§ 493.702 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act, as amended, 42 U.S.C. 201, et seq., also known as the Clinical Laboratories Improvement Act of 1967 (CLIA).

§ 493.704 Licensure application and issuance.

(a) *Licensure application.* (1) An application for the issuance or renewal of a license must be made for each laboratory location by the owner, director or authorized representative of the laboratory on the form or forms prescribed by HHS.

(2) The application for renewal of a license may not be submitted less than 30 days nor more than 60 days before the expiration date of the license.

(b) *Licensure issuance or renewal.* (1) As a part of the review of the application for issuance or renewal of licensure, HHS may require the laboratory to furnish additional information needed to consider the application. HHS also reviews the results of an onsite inspection of the laboratory's premises, performance in proficiency testing and compliance with this part. If HHS determines that the laboratory complies with the standards and other requirements of CLIA and provides consistent performance of accurate and reliable test procedures and services, HHS issues an initial or a renewal license with respect to one or more specialties or subspecialties as specified in §§ 493.243 through 493.281 of this part.

(2) HHS issues initial or renewal licenses for a period of at least one year. If no changes occur that affect the licensure status of the laboratory, HHS notifies the laboratory of its continued approval for at least another year. If changes occur that affect the licensure status of the laboratory, HHS issues a revised license reflecting those changes.

(3) If HHS does not issue or renew a license (in whole or in part), HHS gives the laboratory reasonable notice and issues a statement of grounds on which it proposes to not issue or renew the license or any part of it. The laboratory is also given an opportunity to request a hearing in accordance with the provisions of Part 498 of this chapter.

(4) If a laboratory applies for licensure in any specialty or subspecialty for which a license has been revoked or application for a license has been denied by HHS, licensure for that specialty or subspecialty will not be approved until at least one year elapses from the effective date of the adverse action. HHS may waive this one year period if the laboratory submits good cause for the waiver. A laboratory that requests reinstatement after this one year period must provide assurance that it complies with this subpart.

(c) *Exception.* These standards for issuance and renewal of licenses do not apply to accredited laboratories if—

(1) HHS determines that the standards applied by an accrediting organization are equal to or more stringent than the requirements of CLIA and of these regulations;

(2) The accrediting organization assures that its standards are met by the laboratory;

(3) The accrediting organization and accredited laboratories make available to HHS all records and information required by these regulations and permit inspections as required by HHS.

(4) The laboratory holds an unrevoked and unsuspended letter of exemption issued in accordance with § 493.710 of this subpart.

§ 493.706 Revocation and suspension of licenses and letters of exemption; notice.

(a) A laboratory license or letter of exemption may be revoked or suspended whenever HHS, after reasonable notice and opportunity for a hearing to the owner or director of the laboratory as provided in Part 498 of this chapter, finds—

(1) In the case of a license, that the owner, director or any employee of the laboratory has committed any of the actions specified in section 353(e) of CLIA or has not met the requirements of this part; or

(2) In the case of a letter of exemption, that the laboratory is no longer eligible for its letter of exemption.

(b) Any notice issued under paragraph (a) of this section will contain a statement of the proposed action and of the grounds upon which HHS proposes to act.

(c) If HHS proposes to suspend a license or letter of exemption the notice will state—

(1) The period of such proposed suspension or the action required to end the suspension; and

(2) That the license or letter will be revoked if the appropriate remedial action is not taken within the suspension period.

(d) If HHS proposes to revoke a license or letter of exemption, the notice will state the specialty or subspecialty with respect to which the license or letter of exemption will no longer apply.

§ 493.708 Approval of accreditation and State licensure programs; notice.

(a) Approval of accreditation and State licensure programs is based on HHS' determination that these programs have requirements at least as stringent as those contained in CLIA. HHS, in making this evaluation, considers each program's standards, standards enforcement and survey procedures related to: quality control; maintenance of records, equipment and facilities; qualifications of personnel; proficiency testing; program administration related to renewal of accreditation; frequency and comprehensiveness of onsite inspections; and maintenance and availability of data and records related to accredited laboratories.

(b) In filing an application for approval, the accrediting organization or

State must initially provide all information and data HHS determines necessary to determine if a program can be approved and thereafter must provide all information needed by HHS to determine a program's continued approval. The accrediting organization or State licensure program must—

(1) Provide information regarding the accreditation or licensure, specialties or subspecialties for which accreditation or licensure is applicable which accreditation or licensure is applicable at a frequency required by HHS; and

(2) Notify HHS within five days of any changes in accreditation or licensure.

(c) HHS may require an accrediting organization or State licensure program to sign a written agreement specifying the terms of approval.

(d) If HHS determines at any time that the accrediting organization's or State licensure program's requirements are no longer at least as stringent as CLIA requirements, HHS will notify the accrediting organization or State licensure program and provide a reasonable period of time for revision. If the organization or State licensure program does not provide satisfactory evidence on a timely basis of its continued acceptability, HHS will notify the accrediting organization or State licensure program of the bases for revoking approval. The notice will state that the provisions of section 353 of CLIA and 42 CFR Part 493 requiring licensure will apply to all its accredited or licensed laboratories effective 30 days after the date the notice is received. HHS will also notify each laboratory affected by this determination that its exemption from CLIA licensure is not in effect 30 days after the date the notice is received by the accreditation organization or State licensure program.

§ 493.710 Letter of exemption.

(a) HHS may issue a letter of exemption to a laboratory provided that—

(1) The laboratory owner or authorized representative of the laboratory signs an agreement to permit inspections as required by HHS and makes available records and other information HHS requires; and

(2) The laboratory submits an application form provided by HHS that certifies that the laboratory is accredited or licensed by an approved organization or State licensure program and specifies the specialties and subspecialties for which the laboratory is accredited or licensed and the date or dates of accreditation or licensure.

(b) If a laboratory fails to comply with the requirements of this part, the laboratory will no longer be eligible for a letter of exemption and is subject to the revocation and suspension procedures described in § 493.706 of this subpart.

Appendix A—Laboratory Director Qualification Requirements Before [Effective Date of Regulations]

With respect to individuals first qualifying as laboratory directors before July 1, 1971, an individual who was responsible for the direction of a clinical laboratory for 12 months between July 1, 1961, and January 1, 1968, and, in addition, met one of the following requirements in paragraphs (a) through (d) by July 1, 1971, is qualified to be a laboratory director under § 493.401.

(a) The individual was a physician and after graduation had at least 4 years of pertinent full-time clinical laboratory experience;

(b) The individual held a master's degree from an accredited institution with a chemical, physical, or biological science as a major subject and after graduation had at least four years of pertinent full-time clinical laboratory experience;

(c) The individual held a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject and after graduation had at least six years of pertinent full-time clinical laboratory experience; or

(d) The individual achieved a satisfactory grade through an examination conducted by or under sponsorship of the U.S. Public Health Service on or before July 1, 1970.

Note: The January 1, 1968 date for meeting the 12 months laboratory direction requirement in this appendix may be extended one year for each year of full-time clinical laboratory experience obtained before January 1, 1968 required by State law for a clinical laboratory director license. An exception to the July 1, 1971 qualifying date was made provided the individual requested approval of his or her qualifications by October 21, 1975 and had been employed in an approved clinical laboratory for at least three of the five years preceding the date of submission of his or her qualifications.

Appendix B—Technologist Requirements before July 1, 1971

With respect to individuals first qualifying as technologist before July 1, 1971, an individual who met the following requirements in paragraphs (a) and (b) is now qualified to be a supervisor under § 493.409.

(a) The individual was performing the duties of a clinical laboratory technologist at any time between July 1, 1961, and January 1, 1968, and

(b) The individual has had at least ten years of pertinent clinical laboratory experience before January 1, 1968. This required experience may be substituted by education as follows:

A minimum of 30 semester hours of credit from an approved school of medical technology or toward a bachelor's degree from an accredited institution with a chemical, physical, or biological science as his or her major subject is equivalent to two years of experience. Additional education is equated at the rate of 15 semester hours of credit for one year of experience.

(c) Before [effective date of these regulations], the individual achieved a satisfactory grade in a proficiency examination approved by HHS.

Appendix C—Cytotechnologist Requirements Before [Effective Date of Regulations]

With respect to individuals first qualifying as a cytotechnologist before July 1, 1969, an individual who met one of the following requirements in paragraph (a) and (b) is qualified to be cytotechnologist under § 493.415.

(a) Before January 1, 1969, the individual has:

(1) Been graduated from high school;

(2) Completed six months of training in cytotechnology in a laboratory directed by a pathologist or other physician recognized as a specialist in cytology; and

(3) Completed two years of full-time supervised experience in cytotechnology.

(b) Before [effective date of these regulations], the individual achieved a satisfactory grade in a proficiency examination approved by HHS.

(Catalog of Federal Domestic Programs No. 13.714—Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 24, 1988.

Otis R. Bowen,

Secretary.

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