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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[DA-88-122]

Milk in the Paducah, KY, Marketing Area; Order Suspending Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action suspends certain provisions of the Paducah, Kentucky, order. The suspension increases the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The action also permits a cooperative association to divert the milk of producer members of another cooperative association. An indefinite suspension of the provisions pending a hearing to amend the order was requested by Dairymen, Inc., a cooperative association that represents producers supplying the market. Interested parties were invited to comment on the proposed action. No views in opposition to the indefinite suspension were received. The suspension order adapts the order to a recent change in marketing conditions and will permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: November 7, 1988.

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

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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 the criteria contained therein.

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

Notice of proposed rulemaking was published in the **Federal Register** on September 30, 1988 (53 FR 38296) concerning a proposed indefinite suspension of provisions of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

Statement of Consideration

This action suspends portions of the producer milk definition of the Paducah, Kentucky, milk order. The suspension allows a cooperative association to divert the milk of another cooperative association to nonpool plants. Also, this action allows more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order currently provides that a cooperative association may divert an amount of milk not in excess of 33 percent of the milk of its member producers that is received at pool plants during April through August and December and 25 percent in other months. The same diversion limits apply to a handler who operates a pool plant. The suspension removes the restriction that limits diversions by cooperative associations to member milk and allows diversions equivalent to as much as 33 percent of the milk received at pool plants during all months.

Dairymen, Inc. (DI), a cooperative association that represents producers supplying the market, requested that the provisions be suspended until such time that a hearing can be held to consider amendments to the order.

This suspension action is needed because of declining sales in recent months by DI to fluid milk plants. This decline in sales means that aditional quantities of milk that have been historically associated with the market will have to be diverted to nonpool plants. Also, this action is necessary to accommodate a recent change in marketing practice whereby another cooperative will be the marketing agent for DI member milk that is pooled under the order. The changes are needed to facilitate the efficient marketing of milk under the new marketing practices and conditions.

The suspension order should be made effective upon publication in the **Federal Register** and applied to milk marketed under the Paducah order on and after October 1, 1988. The request was not received in time to ask for comments on the proposed action and make the amendatory change by September 1, 1988, as initially requested by proponent.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will allow a cooperative association to divert the milk of producer members of another cooperative association and permit milk that has been historically associated with the market to continue to be priced under the order.

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for milk marketed under the Paducah order on and after October 1, 1988.

List of Subjects in 7 CFR Part 1099

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1099.13 of the Paducah, Kentucky, order are hereby suspended indefinitely pending a hearing to amend the order.

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. The authority citation for 7 CFR Part 1099 continues to read as follows:

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

§ 1099.13 [Amended] (Suspended in part)

2. In § 1099.13, paragraph (c)(2) is suspended.

3. In § 1099.13(c)(3), the words, "in his capacity as the operator of a pool plant,", "milk of a", "who is not a member of a cooperative association diverting", "pursuant to paragraph (c)(2) of this section,", "at such plant", "such nonmember", "in any of the months of April through August and December and 25 percent in other months" and "nonmember" are suspended.

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

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–25708 Filed 11–4–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–1; Amdt. 39–6027]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) GmbH Model BK–117 A–1, A–3, and A–4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to MBB BK–117 A–1, A–3, and A–4 series helicopters, which supersedes AD 85–02–04, Amendment 39–4989, as amended by AD 85–02–04 R1, Amendment 39–5793. The new AD requires the installation of a revised V_{NE} schedule placard. The AD is needed to prevent a conflict between the existing AD requirements and the revised operational limitations.

DATE: *Effective Date:* November 28, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1988.

Compliance: Required within 30 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Abt, Drehflugler, Postfach 801140, D–8000 Munchen 80, Federal Republic of Germany, or may be examined in the Office of the Assistant Chief Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth.

FOR FURTHER INFORMATION CONTACT: Samuel E. Brodie, Rotorcraft Standards Staff, ASW–110, FAA, Fort Worth, Texas 76193–0110, telephone number (817) 624–5116, or John Varoli, Manager, Brussels Aircraft Certification Office, FAA, c/o American Embassy, APO New York 09667–1011.

SUPPLEMENTARY INFORMATION: AD 85–02–04, Amendment 39–4989 (50 FR 4198; January 30, 1985), as amended by AD 85–02–04 R1, Amendment 39–5793 (53 FR 495; January 8, 1988) requires the installation of a new V_{NE} placard in place of the existing V_{NE} placard. AD 85–02–04 R1 states that the AD does not apply when the MBB stick position augmentation system (SPAS) is installed in accordance with MBB Helicopter Service Bulletin No. SB–MBB–BK 117–40–7, dated April 14, 1988. After issuing AD 85–02–04 R1, the FAA received Alert Service Bulletin ASB–MBB–BK 117–70–101, dated April 11, 1988, which requires the replacement of the V_{NE} schedule placard on all MBB BK–117 A–1, A–3, and A–4 series helicopters, regardless of whether the SPAS is installed or not. Therefore, the FAA is superseding AD 85–02–04 as amended by AD 85–02–04 R1 by requiring replacement of the existing V_{NE} schedule placard on all MBB Model BK–117 A–1, A–3, and A–4 series helicopters.

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

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to the 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, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—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:

Messerschmitt-Bolkow-Blohm (MBB) GmbH: Applies to MBB BK–117 A–1, A–3, and A–4 series helicopters certificated in any category. (Docket No. 85–ASW–1)

Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To prevent possible hazards in flight associated with operation outside of approved operating limits, accomplish the following:

(a) Apply new V_{NE} placards Part Numbers 117–740131.97, 117–740131.98, 117–740131.99, or 117–740131.100, in place of the existing V_{NE} placard in accordance with instructions contained in MBB Alert Service Bulletin MBB–BK 117–70–101, dated April 11, 1988.

(b) The placard required by paragraph (a) may be installed by a pilot who makes the

appropriate maintenance record entries required by FAR Parts 43 and 91.

(c) An equivalent method of compliance with this AD may be used when approved by the Manager, Rotorcraft Directorate, Aircraft Certification Service, FAA, Fort Worth, Texas 76193–0100, or by the Manager, Brussels Aircraft Certification Office, AEU–100, c/o American Embassy, Brussels, Belgium, APO New York 09667–1011.

This procedure shall be accomplished in accordance with MBB Helicopter Alert Service Bulletin ASB–MBB–BK 117–70–101, dated April 11, 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 MBB, GmbH, Abt, Drehflugler, Postfach 801140, D–8000 Munchen 80, Federal Republic of Germany. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 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 supersedes AD 85–02–04, Amendment 39–4989 as amended by AD 85–02–04 R1, Amendment 39–5793.

This amendment becomes effective on November 28, 1988.

Issued in Forth Worth, Texas, on September 14, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Services.

[FR Doc. 88–25652 Filed 11–4–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 779

[Docket No. 80855–8155]

Computer Software; Decontrolled LAN Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends Supplement No. 3 to Part 779, "Computer Software," by reducing the restrictions on software for LAN equipment that has been previously decontrolled for export. This revision has resulted from a review of strategic controls maintained by the U.S. and allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective November 7, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding computer software, call Raj Dheer, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377–0708.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review and because it does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Part 779 of the Export Administration Regulations (15 CFR Parts 768 through 799) is amended as follows:

PART 779—[AMENDED]

1. The authority citation for Part 779 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 3, Part 779 [Amended].

2. In Supplement No. 3 to Part 779, "Computer Software," the "List of Software Subject to This Supplement to Part 779" is amended by revising paragraph (a)(3)(ii) to read as follows:

Supplement No. 3 to Part 779

Computer Software

* * * * *

Technical Notes: * * *

List of Software Subject to This Supplement to Part 779:

(a) * * *

(3) * * *

(ii) One or more of the functions described in ECCN 1565A(h)(1)(i) (A) to (J) and (M) *or* (h)(2)(vi) or for "digital computers" or "related equipment" designed or modified for such functions, *except* the minimum "specially designed software" in machine executable form for "digital computers" and "related equipment" therefore that are freed from export control only by ECCN 1565A(h)(2) (i) or (ii), and only when supplied with the equipment or systems;

Note: "Software" for equipment that is freed from export control only by ECCN 1565A(h)(2)(vi) may contain file server or printer server functions above layer 2 of the OSI reference model provided the protocols do not contain level 3 of CCITT X .25 or equivalent functions.

* * * * *

Dated: November 1, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-25673 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Sydney Futures Exchange Limited ("Exchange" or "SFE") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits certain persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or David R. Cooper, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Designated Members of the Sydney Futures Exchange Limited from the Application of Certain of the Foreign Futures and Option Rules Thirty Days After Filing of Consents by Such Members and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987.) These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30.10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission rule 30.10. 52 FR at 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) appropriate information-sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the person to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated October 13, 1987, the Exchange, which is regulated pursuant to the Futures Industry (New South Wales) Code (the "Code"), petitioned the Commission on behalf of certain of its members for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, the Exchange states that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because the Exchange and its members are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by the Exchange and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in

[1] 52 FR 28980, 28981 and 29002.

particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Australian law and Exchange rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from: registration with the Commission; the separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988); and those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; based upon substituted compliance by such persons with the applicable statutes, regulations and relevant exchange rules in effect in New South Wales, Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Australia who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, "conditions" or criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees including, without limitation, conditions and restrictions on the amount and nature of a licensee's assets, segregation, accounting and limits on the use of customer funds and daily mark-to-market settlement procedures;

(3) A system for the protection of customer funds that applies to all customers and which precludes the use of customer funds to satisfy house obligations, requires separate accounting for such funds and requires covering of deficits within 5 days, augmented by a fidelity fund designed to compensate customers who have suffered a loss as a result of fraud or, at the discretion of the Exchange, insolvency of an Exchange member;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation.

(5) Sales practice standards for licensees which include, for example, required disclosures to prospective customers and prohibitions on (a) certain representations, (b) unapproved advertising, (c) the commingling of customer funds and (d) insider and other improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, the existence of an Exchange Committee for Inspection and Audit with broad powers to investigate, audit, and sanction Exchange members' sales practices and an arbitration program for the resolution of customer disputes; and

(7) Mechanisms for sharing information with the Commission and NFA on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures and options products subject to regulation in Australia, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6 and 33.7, 17 CFR 30.6 and 33.7 (1988). Moreover, the relief granted is directed to brokerage activities by firms licensed in Australia on the Exchange and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards of its place of domicile; such firm is engaged in business with customers located in Australia as well as in the United States; and, such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes in such Code and Regulations;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Australian customers under all relevant provisions of Australian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of an Australian-domiciled firm doing business in the United States under the exemption granted by this Order.[2]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission

[2] In this connection, the Commission notes that the Exchange's petition dated October 13, 1987, already addresses the representations required in paragraphs (1) (c) (d) and (e) of the conditions specified above

Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letter dated July 5, 1988;

(b) Agrees to provide the books and records related to transactions under Part 30 required to be maintained under the applicable statutes, regulations and Exchange rules in effect in Australia upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative, after service of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30 and consents to notify all customers resident in the United States of the availability of such a program;

(f) Maintains the greater of regulatory capital as required under the Code and Exchange Articles or four percent of funds segregated on behalf of customers resident in the United States; and

(g) Undertakes to comply with the applicable provisions of Australian law and Exchange rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto for thirty days after the date of publication. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order will be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the Exchange and/or any applicable regulatory or self-regulatory organization.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

In the future, the Commission may determine that other considerations and conditions are also relevant to the determination to exempt, or to continue to exempt, specified firms from the application of the Part 30 rules generally. To this end, the Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules.

Issued in Washington, DC, on November 1, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-25661 Filed 11-4-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands

Issued October 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations [52 FR 43320 (Order No. 469, 52 FR 18201 (May 14, 1987)). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) [18 CFR 11.2(b) (1988)] of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adopting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1988 through September 30, 1989, the fees in this notice will become effective October 1, 1988. The fees will apply to fiscal year 1989 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jewel Poore, Chief, Management Systems Branch, Office of the Controller, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5640.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin

board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Vincent Mason,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Accordingly, the Commission, effective October 1, 1988, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp,. p. 142 (1978), unless otherwise noted.

§ 11.2 [Amended]

2. In § 11.2(b), "Schedule A" is revised to read "Appendix A".

§ 11.3 [Amended]

3. In § 11.3(a)(2), "[insert the effective date of this section]" is revised to read "September 16, 1986".

4. In Part 11, the fee schedule is designated as Appendix A to the Part and is revised to read as follows:

Appendix A to Part 11

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR

State	County	Fee per-acre per-year
Alabama	All counties	$18.99
Arkansas	....do	14.24
Arizona	Apache	4.75
	Cochise	
	Gila	
	Graham	
	La Paz	
	Mohave	
	Navajo	
	Pima	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Yavapai	
	Yuma	
	Coconino North of Colorado River.	
	Coconino South of Colorado River.	18.99
	Greenlee	
	Maricopa	
	Pinal	
	Santa Cruz	
California	Imperial	9.49
	Inyo	
	Lassen	
	Modoc	
	Riverside	
	San Bernardino	
	Siskiyou	14.24
	Alameda	23.74
	Alpine	
	Amador	
	Butte	
	Calaveras	
	Colusa	
	Contra Costa	
	Del Norte	
	El Dorado	
	Fresno	
	Glenn	
	Humboldt	
	Kern	
	Kings	
	Lake	
	Madera	
	Mariposa	
	Mendocino	
	Merced	
	Mono	
	Napa	
	Nevada	
	Placer	
	Plumas	
	Sacramento	
	San Benito	
	San Joaquin	
	Santa Clara	
	Shasta	
	Sierra	
	Solano	
	Sonoma	
	Stanislaus	
	Sutter	
	Tehama	
	Trinity	
	Tulare	
	Tuolumne	
	Yolo	
	Yuba	
	Los Angeles	28.48
	Marin	
	Monterey	
	Orange	
	San Diego	
	San Francisco	
	San Luis Obispo	
	San Mateo	
	Santa Barbara	
	Santa Cruz	
	Ventura	
Colorado	Adams	4.75
	Arapahoe	
	Bent	
	Cheyenne	
	Crowley	
	Elbert	
	El Paso	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Huerfano	
	Kiowa	
	Kit Carson	
	Lincoln	
	Logan	
	Moffat	
	Montezuma	
	Morgan	
	Pueblo	
	Sedgwick	
	Washington	
	Weld	
	Yuma	
	Baca	9.49
	Dolores	
	Garfield	
	Las Animas	
	Mesa	
	Montrose	9.49
	Otero	
	Prowers	
	Rio Blanco	
	Routt	
	San Miguel	
	Alamosa	18.99
	Archuleta	
	Boulder	
	Chaffee	
	Clear Creek	
	Conejos	
	Costilla	
	Custer	
	Denver	
	Delta	
	Douglas	
	Eagle	
	Fremont	
	Gilpin	
	Grand	
	Gunnison	
	Hinsdale	
	Jackson	
	Jefferson	
	Lake	
	La Plata	
	Larimer	
	Mineral	
	Ouray	
	Park	
	Pitkin	
	Rio Grande	
	Saguache	
	San Juan	
	Summit	
	Teller	
Connecticut	All counties	4.75
Florida	Baker	28.48
	Bay	
	Bradford	
	Calhoun	
	Clay	
	Columbia	
	Dixie	
	Duval	
	Escambia	
	Franklin	
	Gadsden	
	Gilchrist	
	Gulf	
	Hamilton	
	Holmes	
	Jackson	
	Jefferson	
	Lafayette	
	Leon	

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Liberty	
	Madison	
	Nassau	
	Okaloosa	
	Santa Rosa	
	Suwannee	
	Taylor	
	Union	
	Wakulla	
	Walton	
	Washington	
	All Other Counties	47.47
Georgia	All counties	28.48
Idaho	Cassia	4.75
	Gooding	
	Jerome	
	Lincoln	
	Minidoka	
	Oneida	
	Owyhee	
	Power	
	Twin Falls	
	Ada	14.24
	Adams	
	Bannock	
	Bear Lake	
	Benewah	
	Bingham	
	Blaine	
	Boise	
	Bonner	
	Bonneville	
	Boundary	
	Butte	
	Camas	
	Canyon	
	Caribou	
	Clark	
	Clearwater	
	Custer	
	Elmore	
	Franklin	
	Fremont	
	Gem	
	Idaho	
	Jefferson	
	Kootenai	
	Latah	
	Lemhi	
	Lewis	
	Madison	
	Nez Perce	
Idaho (cont)	Payette	14.24
	Shoshone	
	Teton	
	Valley	
	Washington	
Kansas	All other counties	4.75
	Morton	9.45
Illinois	All counties	14.24
Indiana	do	23.74
Kentucky	do	14.24
Louisiana	do	28.48
Maine	do	14.24
Michigan	Alger	14.24
	Baraga	
	Chippewa	
	Dickinson	
	Delta	
	Gogebic	
	Houghton	14.24
	Iron	
	Keweenaw	
	Luce	
	Mackinac	
	Marquette	
	Menominee	
	Ontonagon	
	Schoolcraft	
	All other counties	18.99
Minnesota	All counties	14.24
Mississippi	do	18.99
Missouri	do	14.24
Montana	Big Horn	4.75
	Blaine	
	Carter	
	Cascade	
	Chouteau	
	Custer	
	Daniels	
	McCone	
	Meagher	
	Dawson	
	Fallon	
	Fergus	
	Garfield	
	Glacier	
	Golden Valley	4.75
	Hill	
	Judith Basin	
	Liberty	
	Musselshell	
	Petroleum	
	Phillips	
	Pondera	
	Powder River	
	Prairie	
	Richland	
	Roosevelt	
	Rosebud	
	Sheridan	
	Teton	
	Toole	
	Treasure	
	Valley	
	Wheatland	
	Wibaux	
	Yellowstone	
	Beaverhead	14.24
	Broadwater	
	Carbon	
	Deer Lodge	
	Flathead	
	Gallatin	
	Granite	
	Jefferson	
	Lake	
	Lewis and Clark	
	Lincoln	
	Madison	
	Mineral	
	Missoula	
	Park	
	Powell	
	Ravalli	
	Sanders	
	Silver Bow	
	Stillwater	14.24
	Sweet Grass	
Nebraska	All counties	4.75
Nevada	Churchill	2.37
	Clark	
	Elko	
	Esmeralda	
	Eureka	
	Humboldt	
	Lander	
	Lincoln	
	Lyon	
	Mineral	
	Nye	
	Pershing	
	Washoe	
	White Pine	
	Carson City	23.74
	Douglas	
	Storey	
New Hampshire	All counties	14.24
New Mexico	Chaves	4.75
	Curry	
	De Baca	
	Dona Ana	
	Eddy	
	Grant	
	Guadalupe	
	Harding	4.75
	Hidalgo	
	Lea	
	Luna	
	McKinley	
	Otero	
	Quay	
	Roosevelt	
	San Juan	
	Socorro	
	Torrance	
	Rio Arriba	9.49
	Sandoval	
	Union	
	Bernalillo	18.99
	Catron	
	Cibola	
	Colfax	
	Lincoln	
	Los Alamos	
	Mora	
	San Miguel	
	Santa Fe	
	Sierra	
	Taos	
	Valencia	
New York	All counties	18.99
North Carolina	do	28.48
North Dakota	do	4.75
Ohio	do	18.99
Oklahoma	All other counties	4.75
	Beaver	9.49
	Cimarron	
	Roger Mills	
	Texas	
	Le Flore	14.24
	McCurtain	
Oregon	Harney	4.75
	Lake	
	Malheur	
	Baker	9.49
	Crook	
	Deschutes	
	Gilliam	
	Grant	
	Jefferson	
	Klamath	
	Morrow	
	Sherman	
	Umatilla	
	Union	
	Wallowa	
	Wasco	9.49
	Wheeler	
	Coos	14.24
	Curry	
	Douglas	
	Jackson	
	Josephine	
	Benton	18.99

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State	County	Fee per-acre per-year
	Clackamas	
	Clatsop	
	Columbia	
	Hood River	
	Lane	
	Lincoln	
	Linn	
	Marion	
	Multnomah	
	Polk	
	Tillamook	
	Washington	
	Yamhill	
Pennsylvania	All counties	18.99
Puerto Rico	All	28.48
South Dakota	Butte	14.24
	Custer	
	Fall River	
	Lawrence	
	Mead	14.24
	Pennington	
	All other counties	4.75
South Carolina	All counties	28.48
Tennessee	All counties	18.99
Texas	Culberson	4.75
	El Paso	
	Hudspeth	
	All other counties	28.48
Utah	Beaver	4.75
	Box Elder	
	Carbon	
	Duchesne	
	Emery	
	Garfield	
	Grand	
	Iron	
	Jaub	
	Kane	
	Millard	
	San Juan	
	Tooele	
	Uintah	
	Wayne	
	Washington	9.49
	Cache	14.24
	Daggett	
	Davis	
	Morgan	
	Piute	
	Rich	
	Salt Lake	
	Sanpete	
	Sevier	
	Summit	
	Utah	
	Wasatch	
	Weber	
Vermont	All counties	18.99
Virginia	All counties	18.99
Washington	Adams	9.49
	Asotin	
	Benton	
	Chelan	
	Columbia	
	Douglas	
	Franklin	
	Garfield	
	Grant	
	Kittitas	
	Klickitat	
	Lincoln	
	Okanagan	
	Spokane	
	Walla Walla	9.49
	Whitman	
	Yakima	
	Ferry	14.24
	Pend Oreille	
	Stevens	
	Clallam	18.99
	Clark	
	Cowlitz	
	Grays Harbor	
	Island	
	Jefferson	
	King	
	Kitsap	
	Lewis	
	Mason	
	Pacific	
	Pierce	
	San Juan	
	Skagit	
	Skamania	
	Snohomish	
	Thurston	
	Wahkiakum	
	Whatcom	
West Virginia	All counties	18.99
Wisconsin	do	14.24
Wyoming	Albany	4.75
	Campbell	
	Cargon	
	Converse	
	Goshen	
	Hot Springs	
	Johnson	
	Laramie	
	Lincoln	
	Natrona	
	Niobrara	
	Platte	
	Sheridan	
	Sweetwater	
	Fremont	
	Sublette	
	Uinta	
	Washakie	
	Big Horn	14.24
	Crook	
	Park	
	Teton	
	Weston	
All other zones		6.94

[FR Doc. 88-25328 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 78N-0158]

Uniform Compliance Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration.

ACTION: Final rule; uniform compliance date.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 1991, as its new uniform compliance date with all FDA final food labeling regulations that are published in the **Federal Register** after January 1, 1988, and before January 1, 1990.

FDA periodically has announced uniform compliance dates with new food labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform compliance date of January 1, 1989, is less than 1 year away. Therefore, the agency has concluded that a new uniform compliance date should be established.

EFFECTIVE DATES: January 1, 1991, for compliance with food labeling regulations published after January 1, 1988, and before January 1, 1990, except as otherwise provided in individual regulations.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations requiring changes in labeling for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for compliance with new food labeling requirements (see e.g., the **Federal Register** of October 19, 1984 (49 FR 41019)). Use of a uniform compliance date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform compliance date of January 1, 1991, should be established for future FDA regulations requiring changes in food labels where special circumstances

do not justify a different compliance date. Action is appropriate now because the current uniform compliance date is less than 1 year away. The agency has selected January 1, 1991, to ensure adequate time for implementation of any changes in food labeling that may be required by FDA final regulations published after January 1, 1988, and before January 1, 1990.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus, when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

The new uniform effective date will apply only to final FDA food labeling regulations published after January 1, 1988, and before January 1, 1990. Those regulations will specifically identify January 1, 1991, as their compliance date. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 1991, the agency will determine for that regulation an appropriate compliance date that will be specified when the regulation is published.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the **Federal Register** that announced January 1, 1989, as their compliance date will still go into effect on that date. Final regulations published in the **Federal Register** with compliance dates earlier than January 1, 1989 (e.g., July 1, 1987), are also unaffected by this notice.

The current uniform effective date of January 1, 1989, for new final regulations affecting the labeling of food products was announced in the **Federal Register** of September 25, 1986 (51 FR 34085). Foods initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 1989, are still required to comply with any final FDA regulations that identify January 1, 1989, as their compliance date.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25664 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 182 and 184

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that corn sugar, corn syrup, invert sugar, and sucrose are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency. Elsewhere in this issue of the **Federal Register**, FDA is proposing to affirm the GRAS status of the use of high fructose corn syrup as a direct human food ingredient.

DATES: Effective December 7, 1988. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1857 effective on December 7, 1988.

ADDRESS: Background information and references are on display under the docket number found in brackets in the heading of this final rule in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Definitions

This document discusses the agency's evaluation of the safety of sucrose, corn sugar, corn syrup, and invert sugar. To clarify the agency's discussions of the GRAS status of these ingredients, the agency is defining and explaining pivotal terms in this safety review.

FDA will use the term "sugar" to refer to any free mono- and disaccharide present in food such as glucose, fructose, sucrose, maltose, or lactose. It will use the term "sugars" to describe collectively all forms of sugar present in food.

FDA will use the term "sweetener" to refer to any one or more food ingredients containing sucrose, invert sugar, corn sugar, corn syrup and solids, high fructose corn syrup, honey, and other edible syrups. The term "sweetener," as used in the document is not intended to include any other nutritive or nonnutritive sweetener that is added to food.

In discussing intakes of sugars, the agency will use several additional terms. The agency will use the term "added sugars" to describe all sugars that are added to a food, i.e., all sugars from sweeteners added to foods. The term "naturally occurring sugars" is used to refer to all sugars present naturally in a food. The term "total sugars" is used to refer to the total amount of sugars present in a food, that is, the sum of the added and naturally occurring sugars.

The term "sugar" has traditionally been used by consumers and by the agency (see 21 CFR 145.3(f), 146.3(f), and 170.3(n)(41)) as a synonym for the sweetener sucrose. In this document, however, the sweetener sucrose is identified as "sucrose." Because sucrose also occurs naturally, the term "added" is inserted where it is necessary to make a distinction between added and naturally occurring sucrose. The term "complex carbohydrate" is used in this document to describe any carbohydrates other than those defined as sugars or as specific oligo- or polysaccharides.

B. Regulatory History

In the **Federal Register** of November 30, 1982 (47 FR 53917 and 53923), FDA published proposals to affirm that (1) corn sugar, corn syrup, and invert sugar and (2) sucrose are GRAS for use as direct human food ingredients. FDA published these proposals in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature reviews and the reports of the Select Committee on GRAS Substances (the Select Committee) on corn sugar, corn syrup, and invert sugar and on sucrose have been made available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposals.

The agency's proposals to affirm the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose were based on the safety evaluations of these ingredients by the Select Committee. In its 1976 report entitled "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS-69), the Select Committee concluded (Ref. 1):

Reasonable evidence exists that sucrose is a contributor to the formation of dental caries

when used at the levels that are now current and in the manner now practiced.

Other than the contribution made to dental caries, there is no clear evidence in the available information on sucrose that demonstrates a hazard to the public when used at the levels that are now current and in the manner now prescribed. However, it is not possible to determine, without additional data, whether an increase in sugar consumption—that would result if there were a significant increase in the total of sucrose, corn sugar, corn syrup, and invert sugar added to foods—would constitute a dietary hazard.

In another report entitled "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar as Food Ingredients" (SCOGS-50), also issued in 1976, the Select Committee concluded (Ref. 2):

Evidence exists that simple sugars, including glucose and fructose [and, therefore, corn sugar (dextrose), corn syrup, including high-fructose corn syrup, and invert sugars] are cariogenic. However, in the quantities that these simple sugars are now consumed in processed foods, their contribution to formation of dental caries should be relatively small. If increased usage should occur, as seems likely, the contribution of these sugars to the occurrence of dental caries might become more important.

Other than the contribution made to dental caries, there is no evidence in the available information on corn sugar (dextrose), corn syrup, and invert sugar that demonstrates a hazard to the public when they are used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether an increase in consumption—that would result if there were a significant increase in the total of corn sugar, corn syrup, invert sugar, and sucrose added to foods—would constitute a dietary hazard.

In its proposals on sucrose and on corn sugar, corn syrup, and invert sugar, FDA concurred with the Select Committee's conclusions and proposed to affirm the GRAS status of these ingredients. Based on the Select Committee's conclusion that the safety of possible expanded consumption of these ingredients could not be ascertained, the agency ordinarily would have proposed to establish specific limitations on the use of these ingredients in food. The agency tentatively decided against establishing such limitations, however, because they would be impractical to enforce and would not effectively prevent an expansion in total dietary sugars consumption from the voluntary selection by consumers of high sugar content foods. The proposals noted that the agency has no authority to regulate an individual's choice among available food products. Nonetheless, the agency stated that it would monitor average dietary consumption of these ingredients, and that it would undertake a new evaluation of the safety of the use of sweeteners if total dietary consumption would increase significantly.

In its proposals, the agency also announced that it had received a letter from the Center for Science in the Public Interest (CSPI) dated July 2, 1981, as well as a letter from the Sugar Association, dated July 13, 1981. CSPI alleged that current sweetener consumption presented a risk to the public health and suggested that an association exists between sucrose consumption and many serious health problems, including heart disease, diabetes, hypertension, nutrient deficiencies, and behavior disorders. Based on these concerns and on new scientific literature on these issues, CSPI requested that the Department of Health and Human Services (HHS) convene a special expert committee to evaluate the impact of sweeteners on health. The letter from the Sugar Association responded to these allegations. In the proposals, the agency invited comments on the issues raised in these letters.

Finally, the proposals requested information on lead and cadmium levels in corn sugar, corn syrup, invert sugar, and sucrose and also the submission of any evidence of prior sanctions for use of these ingredients.

FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional uses in accordance with approvals granted by the U.S. Department of Agriculture (USDA) or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of any prior-sanctioned uses could be determined. That notice also provided an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposals would constitute a waiver of the right to assert that sanction at any future time.

Two comments asserting prior sanctions were received in response to the proposals. Both comments claimed prior sanctions for the use of corn sugar, corn syrup, invert sugar, and sucrose in chewing gum and soft drinks. Each comment submitted published documents to support its claim. One of the comments contained Trade Correspondence No. 63 and No. 65 published by FDA in 1939 and 1940, respectively. The other comment contained excerpts from agency advisory opinion letters written before 1958.

On the basis of documentation submitted in the comments, the agency acknowledges that prior sanctions exist for the use of corn sugar, corn syrup, invert sugar, and sucrose in chewing gum and soft drinks. However, the agency has determined that issuance of prior-sanction regulations in 21 CFR Part 181 is not necessary because the conditions of use for these ingredients set forth in the GRAS affirmation regulations in this final rule include the use of these sweeteners in chewing gum and soft drinks under the conditions identified by these comments. Therefore, the agency is not issuing a prior-sanction regulation based upon these comments. In accordance with the proposals for corn sugar, corn syrup, and invert sugar and for sucrose, prior sanctions for conditions of use other than in chewing gum and soft drinks have been waived.

II. Updated Safety Review of Sweeteners

A. Introduction

CSPI and several of the comments on the agency's GRAS affirmation proposals on corn sugar, corn syrup, and invert sugar and on sucrose, requested an updated safety review of sweeteners. Because of the nature of the health-related issues raised by the comments and the length of time since the issuance of the Select Committee's reports on these sweeteners, the agency decided that such a review was appropriate. FDA decided to conduct one complete review for all sweeteners, and not several separate reviews for different individual sweeteners, because the sweeteners are used interchangeably in food, and these sweeteners are closely related and can be expected to have comparable health effects.

The Select Committee conducted separate safety reviews of corn sugar, corn syrup, and invert sugar and of sucrose. In its conclusions, however, the Select Committee also acknowledged that the safety of these individual sweeteners was related to total sweetener consumption. In addition, although the Select Committee did not specifically address the safety of high fructose corn syrup, it considered high fructose corn syrup consumption as an integral part of the overall safety assessment of sweeteners (Ref. 2).

The agency recognizes that a safety assessment of corn sugar, corn syrup, invert sugar, and sucrose cannot be separated from a safety assessment of high fructose corn syrup. Therefore, the agency's updated safety review of sweeteners has included high fructose corn syrup, even though the agency is instituting a separate proceeding on that substance.

In the **Federal Register** of February 8, 1983 (47 FR 5716), FDA issued a final rule on high fructose corn syrup that listed that substance as GRAS in 21 CFR Part 182. The agency stated that it would consider whether it could affirm the use of high fructose corn syrup as GRAS upon completion of its safety review of the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose. Elsewhere in this issue on the **Federal Register**, FDA is proposing to affirm that the use of high fructose corn syrup as a direct human food ingredient is GRAS.

B. Description of the Review

In November 1983, the agency established a Sugars Task Force (the Task Force), composed of scientists from FDA's Center for Food Safety and Applied Nutrition (CFSAN), to assess the safety of dietary sugars (excluding lactose) as currently consumed in the American diet. The Task Force initiated its review by undertaking a search of the published literature for safety studies on sucrose, corn sugar, corn syrup, and invert sugar or their component sugars. The Task Force compiled an initial literature update on health effects of sugars consumption from the computer data banks Medline, Toxline, Cancerline, and Biological Abstracts, as well as from other available sources. The Task Force contacted each person that submitted a comment on the proposal and requested that he/she submit a copy of the references supporting his/her comments for evaluation.

The agency also published notices in the **Federal Register** of June 6, 1984 (49 FR 23457), and December 5, 1984 (49 FR 47505), announcing an opportunity for public review and comment on the bibliographic compilation of scientific articles retrieved through its literature search. The notices also solicited copies of any relevant data, published or unpublished, not included in the agency's compilation. In addition, the notices explained that the final rules on the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose would be based on the data evaluated during the Selected Committee's 1976 reviews of the safety of these ingredients, the data submitted in the comments on the proposals published in the **Federal Register** of November 30, 1982 (47 FR 53917 and 53923), and the data and information generated in response to the notices announcing the sugars bibliography. These data, along with the Task Force's estimate of sweetener consumption by the U.S. population, formed the basis for the Task Force's updated safety evaluation of sugars. The Sugars Task Force report was published in the *Journal of Nutrition* (Ref. 3).

The agency has received more than 65 comments including a detailed letter from the Center for Science in the Public Interest (CSPI) and a citizen petition from Maura (Jinny) Zack concerning the Sugars Task Force report. The comments, CSPI's letter, and the citizen petition asked that the Sugars Task Force report be revoked, amended, or clarified to make it clear that sugars consumption may be a health hazard to certain specific segments of the population. The CSPI letter urged the agency to reissue the report with revised sugars intake estimates and to rewrite some of its conclusions regarding the role of sugars in certain disease states. The letter also asked that the revised report include advice for consumers who are interested in eating a nutritious diet that will minimize their risk of health problems.

The citizen petition requested that the Commissioner revoke the Sugars Task Force report and prohibit further advertisements concerning the safety of sugar. The petition also called for a retraction of the advertisements already done by the Sugar Association and urged the Commissioner to make public announcements that processed sugars may have adverse health effects on certain segments of the population. In addition, the petition requested that if, after further investigation by the agency, the alleged harmful effects of sugars are confirmed, labeling should be ordered for the food containing sugars stating: "This product contains processed (or refined) sugar which may be injurious to your health".

The agency has reviewed the comments, the letter from CSPI, and the citizen petition concerning the Sugars Task Force report. The agency finds that the vast majority of the comments restated the allegations made in the citizen petition but provided no data to support their claim.

The issues raised in the CSPI letter relative to the Sugars Task Force report have been addressed in a separate agency action. (See the letter of September 26, 1988, from the Acting Director of CFSAN to CSPI (Ref. 4).) In general, the agency found that CSPI did not provide any scientifically sound data to warrant the revision of the report or of any of the conclusions contained in the report. Similarly, the agency addressed the issues raised in the citizen petition in a separate action. (See the letter of March 4, 1988, from the Associate Commissioner for Regulatory Affairs to Maura (Jinny) Zack (Ref. 5).) The agency found that the petition failed to provide scientifically valid data to support the allegations made in the petition. Moreover, some of the actions requested by the petitioner were either inappropriate under agency regulations or not within the jurisdiction of FDA.

C. Exposure Estimates

As part of its review, the Task Force estimated current intakes of sugars in the United States.

In its reports on sucrose and on corn sugar, corn syrup, and invert sugar, the Select Committee used an estimate of sweetener consumption prepared from the 1970 National Academy of Sciences/National Research Council (NAS/NRC) comprehensive survey of industry on the use of GRAS food ingredients (Ref. 6). Because no recent update of this survey was available and there was a need for an estimate that more accurately reflected the true consumption, the Task Force developed a method to estimate sugars (and thus sweetener) consumption. Under this method, the Task Force integrated food consumption data from the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey of 1977–1978 with information on sugars content of food (Ref. 3). The information on the sugars content was compiled in 1984 from reported analytical data, direct laboratory analysis of foods, information obtained from manufacturer or product labels, calculation using recipes developed by USDA for estimating nutrient content of survey foods, and commercial product formula information. From these data, the Task Force estimated current average and the 90th percentile daily intakes of total sugars, adjusted total sugars, and individual sugars (e.g. fructose and sucrose) for the total population and 14 sex/age subgroups of the U.S. population. Adjusted total sugars represent total sugars excluding lactose. Lactose was excluded because it is not a subject of this GRAS review. The Task Force also estimated the relative contributions of added sugars (sugars from sweeteners) and naturally occurring sugars to total sugars intake. The 14 sex/age subgroups used by the Task Force are those used by NAS in its

estimates of the U.S. Recommended Dietary Allowances (Ref. 8).

The Task Force's method for estimating sweetener consumption was different from the method used by the Select Committee. Consequently, the estimates of sweetener consumption by the Task Force and by the Select Committee could not be directly compared. To compare sweetener consumption in 1976 and in 1985, the Task Force relied on a third set of data. The Task Force compared trends in sweetener usage (including a projected usage) based on USDA data on sweetener disappearance (USDA disappearance data) (Ref. 7). Disappearance data for sweeteners represent estimates of domestic shipments (deliveries) by refiners and importers of sweeteners to primary buyers such as food industries, trades, wholesalers, and retailers (Ref. 3). The data represent approximate estimates of the total amount (dry weight) of sweeteners available for consumption by the U.S. population and not the amount of sweeteners actually consumed.

These data tend to exaggerate average consumption levels and thus do not provide realistic estimates of actual sweetener consumption. A more accurate estimate of sweetener consumption, based on these data, would require adjustments to correct for loss and waste that can occur (1) during shipment and handling of the product; (2) during storage at wholesale, retail, and household levels from spillage and damage by insects and pests; (3) during commercial processing and home preparation of food; (4) during consumption at the table (plate waste) or other types of waste in households and food service institutions; and (5) in other miscellaneous usages of sweeteners (Ref. 3).

Nevertheless, because these disappearance data are collected regularly in a consistent and orderly manner, these data provide an appropriate basis to assess trends in sweetener usage. The Task Force used the USDA's disappearance data to determine whether the Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose, which were predicated on a stable level of total sweeteners consumption, were still valid for 1985 levels of sweetener consumption.

D. Task Force's Review of Health Effects

During the course of gathering information, the Task Force evaluated approximately 1,500 articles relating to possible effects of dietary sugars on dental caries, glucose tolerance, diabetes mellitus, blood lipids, cardiovascular disease, behavior, obesity, malabsorption syndromes, food allergies, nephrocalcinosis, gallstones, nutrient deficiencies, and carcinogenicity.

The Task Force summarized the critical studies on each of these matters. In reviewing individual studies, the Task Force considered both the experimental design of the study and the observed effects. The Task Force also considered the allegations by CSPI relative to sugars consumption and adverse health effects, and whether the updated data established that adverse health effects were associated with the consumption of sugars. It then evaluated the significance of any adverse effects for the U.S. population or population subgroups at current levels of sugars consumption.

Based on its review, the Task Force developed a report on the health effects of sugars consumption entitled "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners" (Ref. 3). The report sets forth, for each matter the Task Force considered, summaries of the relevant studies, a discussion of the significant findings from the studies, and conclusions regarding these findings. The report also includes a final conclusion on the safety of current sugars consumption. A copy of the Task Force report has been placed on file in the Dockets Management Branch (address above). It is also available as the November 1986 supplement to the *Journal of Nutrition* (Ref. 3).

The Task Force concluded from its review of sugars that:

(1) Evidence exists that sugars, as they are consumed in the average American diet, contribute to the development of dental caries.

(2) Other than the contribution to dental caries, there is no conclusive evidence in the available information on sugars that demonstrates a hazard to the general public when sugars are consumed at the levels that are now current and in the manner now practiced (Ref. 3).

E. The Select Committee's Conclusions Compared to the Task Force's Conclusions

In their safety reviews, both the Select Committee and the Task Force recognized the unique toxicological position of sugars and sweeteners as food components and ingredients. Both groups recognized that sugars and sweeteners have low acute toxicity and are macronutrients that have a long history of consumption as major sources of calories in the United States (Refs. 1, 2, and 3). Both groups also recognized that the monosaccharide glucose has a central role in human metabolism (Refs. 2 and 3).

The Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose were based on the level of consumption of these ingredients in 1976. To determine the continuing validity of these conclusions, as discussed above, the Task Force assessed the trend in sweeteners availability since the Select Committee issued its reports. These data show that, over this period, total sweetener availability has remained relatively stale (Ref. 3). Accordingly, FDA concludes that the Select Committee's safety conclusions are applicable to the current consumption of these sweeteners, and that the Task Force's findings and conclusions regarding the safety of these ingredients supplement the Select Committee's conclusions.

On the issue of dental caries, both the Task Force report (Ref. 3) and the Select Committee reports (Refs. 1 and 2) concluded that the current level of consumption of sweeteners, and of the sugars they contain, contributes to the incidence of dental caries in the general population, but that this consumption is not the only factor contributing to the incidence of dental caries.

The Task Force also found that dental caries incidence in the United States has declined significantly since the Select Committee issued its report in spite of the fact that sugars consumption has remained unchanged over that period. The Task Force attributed this decline, in part, to preventative dental methods (Ref. 3).

Both the Select Committee and the Task Force have concluded that there is no conclusive evidence that sugars consumption at present levels poses a health hazard to the general public, other than a contribution to dental caries.

III. Comments on the Proposals

A. Introduction

In response to its proposals, the agency received 16 comments from organizations or individuals regarding the proposed GRAS affirmation of corn sugar, corn syrup, invert sugar, and sucrose. The agency received nine comments from food manufacturers and trade organizations, two comments from professional societies, and five comments from individuals. As noted above, the agency had also received, before the publication of the proposals, two letters addressing health effects of

sweetener consumption. One letter was from CSPI, and the other was from the Sugar Association. FDA combined the letter from the Sugar Association with subsequent letters from that association on the proposal and treated these letters as one comment. Multiple submissions from a single company on the proposal were also combined and considered as a single comment.

Thirteen comments addressed health issues associated with sugars consumption. Six comments addressed the labeling of sugars content of food. Four comments urged a possible educational campaign on sugars and health. Two comments, as mentioned previously, addressed prior sanctions for corn sugar, corn syrup, invert sugar, and sucrose. Three comments discussed lead and cadmium levels in these ingredients. Two comments requested specific changes in the agency's proposed GRAS affirmation regulations for corn sugar, corn syrup, and invert sugar.

B. Comments Raising Health Related Issues

The comments that addressed health issues associated with sugars consumption focused on the allegations made by CSPI. Five comments, including that from CSPI, claimed that consumption of sugars causes one or more adverse health effects. Eight comments, including that from the Sugar Assocation, generally denied that there is an association between sugars consumption and adverse health effects. Underlying the agency's review of the comments is the view that, given the long history of safe use of sugars in food, and the fact that the statute recognizes that such a history provides a basis for GRAS status (21 U.S.C. 321(s)), the burden of establishing the existence of an adverse health effect of consuming sugars lies with the person asserting that this adverse effect exists. In the absence of such a showing, no change in the GRAS status of the use of the ingredient under review is warranted.

1. Dental Caries

a. Three comments asserted that sucrose consumption is cariogenic, i.e., associated with the incidence of dental caries. Another comment argued that all fermentable sugars are cariogenic, whether they are added to food or occur naturally.

The agency has reviewed these comments and agrees that sugars consumption is a contributing factor in the incidence of dental caries. The agency finds that current data show that sugars that are fermentable by cariogenic bacteria and that are present in normal diets do contribute to the formation of plaque and dental caries.

These findings are consistent with those of the Select Committee, which found that the consumption of sweeteners contributes to the formation of dental caries in the general population.

b. Six comments questioned the role of sugars consumption in the formation of dental caries. One comment cited data (Refs. 9, 10, and 11) showing that there is no correlation between consumption of highly sugared foods and dental caries incidence. Two other comments asserted that the rate of caries formation depends upon a number of variables other than consumption of sugars. Other comments cited epidemiological evidence (Refs. 12 and 13) that showed that there has been a downward trend in caries formation during the past decade, while sugar consumption has remained stale over the same period.

The agency reviewed these comments and agrees that caries formation depends on a number of variables, and that sugars consumption is not the sole causative factor in dental caries. However, the agency does not agree that sugars consumption is not related to dental caries formation.

The Task Force found that the scientific literature and clinical trials do not establish a clear quantitative relationship between sugars consumption and dental caries incidence. The cariogenicity of dietary carbohydrates depends on the duration of food contact with the teeth and on the presence or absence of other food substances that can modify the cariogenic potential of sugars. Thus, there is no apparent simple relationship between the sugars content of food and cariogenic potential (Ref. 3).

The Task Force report confirmed the Select Committee's finding that the etiology of dental caries is multifactorial, with dietary factors being only one of the three major groups of factors that are involved in the development of carious lesions (Refs. 1 and 2). These factors include oral microbial flora (e.g., cariogenic bacteria and dental plaque) and host factors (e.g., resistance to dental decay and hardness of tooth surface), as well as dietary factors such as the residence time of fermentable carbohydrate and plaque acidity (Ref. 3). However, the finding that the etiology of dental caries is multifactorial is not inconsistent with the finding that a relationship exists between sugars consumption and dental caries formation because sugars represent a major source of fermentable carbohydrates in the diet.

c. Having considered the comments and the Task Force report, the agency finds that there is no basis for any more concern about the association between sugars consumption and the incidence of dental caries than that expressed in the Select Committee report. This finding is based on two factors:

(1) The Task Force report shows that total exposure to sweetners has not changed since the Select Committee report.

(2) The Task Force report shows that caries incidence in the United States has declined in the past decade. The data reviewed in the Task Force report suggest that further developments in caries prevention should augment this decline in the future.

Therefore, despite evidence that consumption of sucrose, corn sugar, corn syrup, and invert sugar is associated with dental caries, the agency does not believe it appropriate to modify the GRAS status of these ingredients.

2. Obesity

Two comments claimed that overconsumption of sucrose causes obesity but provided no data to support the assertion. Six comments disagreed with the contention that obesity is related to sugars consumption. Several comments cited data (Refs. 14, 15, and 16) to refute an association between sugars consumption and obesity. Several other comments asserted that obesity can result from overconsumption of any caloric source, and that the most important factor in obesity is the balance between calorie intake and energy expenditure.

The agency has reviewed the comments and the studies cited in the comments.

In one study, Walker studied black and white teenagers in South Africa and determined that sugars consumption by teenagers in the upper percentile for body weight was comparable to sugars intake in the lower percentile (Ref. 16). The agency finds that such studies tend to argue against a specific role for sugars consumption in obesity.

During the course of its review, the Task Force found that dietary manipulations leading to increased caloric intake have a potential for causing increased body weight. The Task Force also found, however, that the available data support the view that sugars do not have a unique role in the etiology of obesity. This finding of the Task Force is in agreement with the finding of the Select Committee, which noted that excessive consumption of sucrose may contribute to obesity as a nonspecific source of calories.

Thus, the agency concludes that the available data indicate that excess sugars consumption may contribute to obesity as a nonspecific source of calories but not because of any special property of sugars.

3. Glucose Tolerance

The agency received several comments related to disease conditions that are characterized by abnormal responses to a glucose tolerance test.

This induction of a permanent disease state as a result of changes in glucose tolerance brought about by sugars consumption would be of concern because, if found, such changes would implicate dietary sugars intake in the etiology of diabetes or hypoglycemia. (Hypoglycemia is a spectrum of disorders resulting in a decline of blood sugar either after fasting or after the ingestion of a meal.) (Ref. 3).

The Select Committee was of the opinion that there was not sufficient evidence to demonstrate that the consumption of sucrose, corn sugar, corn syrup, or invert sugar caused a deterioration of glucose tolerance in humans (Refs. 1 and 2). The Task Force also found no persuasive scientific evidence that supports the contention that current use levels of sugars or sweeteners directly contribute to the development of abnormal glucose tolerance in the general U.S. population (Ref. 3).

4. Hypoglycemia

One comment asserted that there is an association between hypoglycemia and high sugars consumption, and three comments claimed that there is not. Neither group of comments cited any data to support its position.

One comment claims that the incidence of hypoglycemia is increasing but provided no data to support its assertion. Other comments claimed that hypoglycemia is a rare disorder, and that its incidence has been exaggerated. Several comments claimed that the incidence of hypoglycemia is unknown.

The agency has reviewed these comments as well as the reports of the Task Force and the Select Committee and agrees that there is no evidence that suggests that hypoglycemia is other than a rare disorder. The agency can also find no evidence that the incidence of hypoglycemia is increasing.

In its review, the Task Force found a number of reports on human behavior related to "reactive" or postprandial hypoglycemia (decreased blood glucose after eating) (Ref. 3). A review of these reports including one by Harper and Gans (Ref. 17), reveals that there is a lack of scientific experimentation and interpretable data upon which to draw any conclusions about the relationship between sugars consumption and hypoglycemia.

Based on the available safety information, the agency concludes that there is insufficient data to demonstrate an association between sugars consumption and hypoglycemia in the general population.

5. Diabetes

Five comments asserted that there is no relationship between sugars consumption and diabetes. These comments cited other factors in the etiology of diabetes such as genetics, immune factors, and obesity. Several comments cited obesity as a major determinant in the emergency of adult onset diabetes.

Several comments asserted that control of diabetes requires restriction of total calorie intake, and that little scientific basis exists for singling out sugars for restriction in the diet of diabetics (Ref. 18).

One comment suggested that consumption of fructose by adult onset diabetics should be carefully controlled. In support of this suggestion, the comment cited data showing an increase in plasma insulin levels in rats fed fructose (Ref. 19), as well as data showing a decrease in insulin sensitivity in rats fed fructose (Ref. 20). The comment also cited data showing a significant reduction in both insulin binding to isolated monocytes and insulin sensitivity in humans fed 1,000 kilocalories of fructose per day for 1 week (Ref. 21).

Based on the findings of the Task Force, the agency agrees that factors other than sugars consumption (such as genetics and obesity) are important in the etiology of diabetes. The Task Force report reinforced the Select Committee's finding that consumption of sugars is not a causative factor in diabetes and is related to the onset of the disease only as a nonspecific source of calories. Although consumption of a diet with a very high level of sugars may produce adverse effects on glucose tolerance and insulin metabolism, the current level of sugars consumption has not been shown to be an independent risk factor for the development of impaired glucose tolerance (Ref. 3). The agency also agrees that control of diabetes requires careful monitoring of the entire diet and not just the monitoring of the sugars content of the diet.

The Task Force evaluated the data cited by the comment relating to plasma insulin levels and insulin sensitivity after consumption of fructose but did not find that the data supported a limitation of fructose in the diet of diabetics. The Task Force considered the data showing an increase in plasma insulin levels in rats fed fructose (Ref. 19). It found that because of the high level of fructose fed (66 percent of calories), the data did not provide a basis on which to estimate threshold levels of fructose consumption for adverse effects on blood glucose, insulin secretion, and tissue insulin sensitivity. Moreover, the Task Force concluded that, because of the flaws in the design of this study and of the excessive amounts of fructose fed to the animals, the data could not be used to determine the effects of fructose consumption under normal conditions.

With regard to the second study (Ref. 20), the Task Force found that it could not determine the significance of the study's findings because the study only lasted 7 days, and the data did not provide a basis on which to determine whether the observed effects represented normal adaptive mechanisms that are reversible or were effects associated with irreversible pathologic processes.

The Task Force reviewed studies investigating the effects of sugars (including fructose) consumption on blood glucose and insulin level in human diabetics (Ref. 21). However, the Task Force found that these studies did not show a consistent effect from consumption of sugars (or from consumption of a particular sugar). The Task Force noted that these studies emphasize the importance of assessing the glycemic or insulinogenic effects of diets and meal plans as opposed to single dietary components.

The agency concludes that neither the comments nor the Task Force report demonstrated that sugars consumption is associated with the etiology of diabetes in any way other than as a source of calories that can contribute to obesity, which is associated with adult onset diabetes.

6. Hyperlipidemia

Two comments claimed, based on data that they cited (Refs. 22, 23, and 24), that high sucrose consumption produced elevated blood lipid levels (hyperlipidemia) in the general population. One comment also cited data to show that sucrose consumption had a greater effect in elevating blood lipid levels than did consumption of other simple or complex carbohydrates (Refs. 22, 23, and 24).

One comment questioned the significance of the data cited to link sucrose consumption with hyperlipidemia (Refs. 25 and 26).

One comment asserted that the normal consumption of sucrose had little or no effect on serum triglyceride levels, but the comment provided no data to support this assertion. Another comment questioned the uniqueness of sucrose of fructose in causing hyperlipidemia in humans. This comment discounted the rat model data showing effects of fructose consumption because rats metabolize fructose differently than humans.

The Task Force found that studies in animals demonstrated that the effect of high carbohydrate or high sugars diets (65 to 75 percent of caloric intake) on blood lipids depends on a number of factors, including species, sex, strain, duration of experiment, dietary levels of noncarbohydrate components, physical activity, and meal patterns (Ref. 3). These findings support the Select Committee's finding that the ability of sucrose or fructose to modify serum lipid patterns depends on the animal's strain, sex, age, and species and on the adaptation response of the animal to prolonged exposure to sugars (Ref. 1).

The agency acknowledges that, in some of the animal studies, sucrose and fructose appear to be associated with the elevation of blood lipids. However, the agency finds that it cannot make a definitive conclusion about the significance of this apparent association because of the number of variables that have an impact on the results. Moreover, because of differences in metabolism between experimental animals and humans, it is difficult to extrapolate from animal experiments to humans.

The Task Force evaluated the possible role of dietary carbohydrates in the regulation of blood lipids and lipoprotein levels in humans. It found that dietary manipulations can cause changes in blood lipid levels and in lipoprotein patterns. The Task Force found that both high fat and high carbohydrate diets have been reported to increase serum cholesterol or triglyceride levels. However, the Task Force also reports that these studies were inconsistent. In some studies, high sucrose or high fructose intake did not lead to any changes in serum cholesterol, triglyceride, or lipoprotein patterns, while, in others, all of these parameters were affected by sugars consumption. According to the Task Force, these discrepancies may be the results of differences in experimental protocols, including the composition of the noncarbohydrate components of the diet of the subjects and the duration of the study; in physical activity of the study subjects; in subjects' genetic variability; or in changes in the subjects' body weight during the course of the study. All of these factors have been shown to influence blood lipid levels (Ref. 3). Thus, because of the myriad of factors that influence blood lipid levels and because of inconsistency in the results from different experiments, the agency concludes that the available data are not adequate to demonstrate that a causal relationship exists between levels of sugars consumption and blood lipid levels in the normal population.

7. Carbohydrate Sensitivity

a. Two comments asserted that a subpopulation exists whose serum lipid levels and glucose tolerance parameters are more affected by sugars consumption than are those of the general population. The comments cited studies (Ref. 3) on the effects of diet on glucose tolerance and blood lipid levels in individuals classified as "carbohydrate sensitive."

One comment cited data to support the contention that this carbohydrate-sensitive subpopulation (as defined in the studies) may constitute 9 to 17 percent of the U.S. population (Refs. 27 and 28). Although no comments questioned the existence of this subpopulation, one comment claimed that the size of this population (as defined by the studies cited above) has been exaggerated.

One comment cited studies showing that a small segment of the population is carbohydrate-sensitive, a condition that is characterized by greater serum insulin and glucose response to sucrose load than that occurs in normal individuals (Ref. 29). Based on these studies, the comment suggested that sugars consumption might present an increased risk of diabetes for carbohydrate-sensitive individuals.

Several comments claimed that the consumption of high levels of fructose and sucrose (but not lower levels) caused abnormal serum lipid levels in carbohydrate-sensitive individuals. One comment cited data to support this claim (Refs. 30 and 31).

Two comments suggested a possible association between hyperlipidemia and normal sucrose consumption in carbohydrate-sensitive individuals. The comments claimed that data showing hyperlipidemia in carbohydrate-sensitive individuals after high sucrose consumption are evidence of this association (Ref. 30), and that these individuals are at greater risk than the general population at developing heart disease. However, several other comments claimed that carbohydrate sensitivity has not been shown to be a significant factor in the etiology of coronary heart disease.

The agency has reviewed these comments and the reports of the Task Force and the Select Committee. The agency finds that the significance of "carbohydrate sensitivity" is difficult to assess because various authors use different definitions of "carbohydrate sensitivity" and do not establish any relationship between the "carbohydrate sensitivity" observed in their study and a well-defined disease condition. For example, carbohydrate-sensitive individuals, as defined in the initial studies cited by the comments (Refs. 22 and 27), are individuals without overt disease who have the combination of elevated serum triglyceride levels (above 150–200 milligrams per deciliters) and an exaggerated insulin response (2.5 to 4 times normal) to oral sucrose loads. But the study provided no data to link these individuals with subsequent onset of diabetes.

One study (Ref. 22) cited by a comment associates "carbohydrate sensitivity" with type IV hyperlipoproteinemia. However, the study provides no data to substantiate the connection. This comment also cited data from this study (Ref. 22) to suggest that "carbohydrate sensitive" individuals are at increased risk in developing diabetes. However, the study provided no connection between "carbohydrate sensitivity" with the subsequent development of diabetes. Furthermore while prediabetics may exhibit hyperinsulinemic responses to carbohydrate meals, the subsequent development of diabetes in these individuals has not been linked to the ingestion of carbohydrate but rather to obesity and other factors (Ref. 3).

In its review, the Task Force was unable to confirm the frequency of occurrence of carbohydrate sensitivity in the U.S. population (alleged to be 9 to 17 percent) or the significance of the occurrence of carbohydrate sensitivity to the development of a disease condition. The frequency of occurrence figures (9 and 17 percent) cited by the comment were based on the results of two studies (Refs. 27 and 28, respectively) that investigated the blood lipid patterns of free-living populations without overt disease and identified subgroups within these populations that had blood lipid patterns that fell into one of five types of hyperlipoproteinemia (as defined by the authors of the studies). The populations studied were relatively small (1,118 and 1,301—Refs. 27 and 28, respectively), and the studies provided no data to demonstrate that these populations

were representative of the U.S. population as a whole. Furthermore, the blood lipid parameters used to define type IV hyperlipoproteinemia, which the comment identified as "carbohydrate sensitivity," differed between the two studies and also differed from the parameters used in Ref. 22, which was also cited by the comment. Finally, one of the studies (Ref. 27) acknowledged that the relationship between type IV hyperlipoproteinemia as defined in that study and premature coronary atherosclerosis is not well defined.

The Task Force found that carbohydrate sensitive individuals have a genetic predisposition to exaggerated insulin responses and elevated blood lipids with sucrose loading. However, the studies of high sucrose diets included several confounding variables, one of which was use of a gorging pattern of sucrose ingestion (Ref. 3). This pattern appeared to be necessary to elicit the response to sucrose. Furthermore, the Task Force found no evidence to show that prolonged high dietary sugars consumption will result in the development of diabetes mellitus in carbohydrate-sensitive individuals.

The Task Force questioned the relevance of data showing abnormal serum lipid levels in carbohydrate-sensitive individuals after consuming high levels of sucrose and fructose to the evaluation of health effects of normal sugars consumption in healthy individuals. The studies with sucrose had the same major problems as the studies on insulin response, including the gorging pattern of ingestion (Ref. 29).

In contrast, the study with fructose employed a conventional meal pattern. In this study (Ref. 31), plasma triglycerides increased significantly in carbohydrate-sensitive subjects but not in healthy controls after consumption of 7.5 and 15 percent dietary fructose. However, under these conditions, plasma cholesterol and LDL-cholesterol increased in both groups. The Task Force concluded that before the significance of this study could be fully evaluated relative to atherogenic risk, additional studies are needed to compare the observed effects of fructose with those occurring with other dietary sugars. The Task Force said that these studies should be carefully controlling for other dietary variables and for factors such as body mass index.

b. One comment questioned the applicability to humans of the animal model used in some studies to demonstrate carbohydrate sensitivity. The comment also questioned the relevance of data from the experimental animals fed high levels of sucrose to normal human consumption of sugars.

The agency agrees with this comment. Some of the animal data cited by the comment suggest the possibility that consumption of sugars at high dietary levels may result in an elevation of serum cholesterol and low-density lipoprotein and decreased insulin sensitivity. However, the Task Force found that clinical studies involving human subjects show no definitive relationship between sugars consumption and these effects (Ref. 3). Extrapolation of results from animal studies to humans is complicated by the differences that exist in sugar metabolism between some of the animals tested and humans, the lack of a dose-response relationship, and the presence of other factors that influence glycemic responses. Clinical studies that were conducted with normal humans and that were designed to evaluate the effect of current levels of sugars consumption on serum parameters (i.e., cholesterol, low-density lipoproteins, and insulin sensitivity) did not show any effect (Ref. 3).

c. The agency finds that, although there is evidence that a subset of the U.S. population experiences an elevation in serum lipids in response to a sucrose load, the data do not establish the size of this subset. Furthermore, based on the Task Force report, the agency finds that the available data do not demonstrate that sugars (including fructose), at current levels of consumption, had any different effects than other carbohydrates in inducing abnormal insulin and lipid levels in carbohydrate-sensitive individuals. Sugars have not been shown to present an increased risk of diabetes or coronary heart disease in this population.

8. Hypertension

Two comments asserted that high sucrose diets are linked to hypertension. One comment cited studies in humans, spider monkeys, and rats to support this assertion (Refs. 32, 33, and 34).

Four comments asserted that the link between sucrose consumption (either alone or in combination with salt) and hypertension is speculative. Several comments cited other data that showed no association between sucrose consumption and hypertension (Refs. 35 and 36).

The agency does not agree that sugars (including sucrose) consumption is linked to hypertension. In Sprague-Dawley rats, very high levels of sucrose in the diet can cause a slight rise in the systolic blood pressure. This rise in blood pressure is more pronounced when high levels of sodium chloride are also included in the diet. The interactive effects of other potentially important dietary factors, such as calcium, potassium, chloride, or fatty acids intake, have not been systematically examined.

Spontaneously hypertensive rats developed higher blood pressures with consumption of sucrose. The blood pressure increases from dietary sucrose and sodium in these rats were additive. However, in Wistar rats, blood pressure was not affected by ingestion of high levels of sucrose, although it was affected by ingestion of high levels of sodium chloride. These findings support the likelihood that the effect of sucrose on blood pressure is species and strain specific, and that in normal rats, the effect is dependent on high dietary levels of sodium chloride.

There is also some indication that at least some of the effects of sucrose on blood pressure are the result of increased body weight. Two studies in monkeys reported increased blood pressure as a result of consumption of diets with very high sucrose or high sucrose plus sodium chloride contents. In both studies, the body weights also increased during the experimental period, supporting the possibility that the observed effect on blood pressure was related to the body weight increase and not specifically to sucrose.

No data are available concerning the possible influence of long-term high sucrose consumption on blood pressure in humans. In normal human subjects, some sugars seem to have an acute, and possibly transient, effect on natriuresis (excretion of abnormal amounts of sodium in the urine). There is, however, no correlation between the potency of sugars as antinatriuretic agents and sugars' effect on blood pressure.

Based on its review of all the existing data, the Task Force found no convincing evidence to support the contention that current dietary intakes of sugars contribute to the development of hypertension (Ref. 3). The Select Committee, in its report on sucrose, reviewed preliminary data from a human study concerning the relationship between high sucrose diets and elevated blood pressure. The Select Committee found the data inadequate to draw any substantive conclusions (Ref. 1). Based on these findings, the agency concludes that current data are inadequate to establish a causal relationship between sugars consumption and hypertension.

9. Cardiovascular Disease

a. One comment hypothesized that diabetes and atherosclerotic disease are linked by hyperinsulinism. The comment suggested that sucrose consumption may

affect atherosclerotic disease by raising blood insulin levels and cited data showing effects of sucrose consumption on blood insulin levels (Ref. 37).

The agency does not agree with the comment. The Task Force noted that the major risk factors for cardiovascular disease identified by epidemiological studies include sex, positive family history of hypercholesterolemia, elevated low-density lipoprotein fraction of lipoproteins, hypertension, obesity, diabetes, cigarette smoking, and physical inactivity. Among these, hyperlipidemia, hypertension, obesity, and diabetes have a potential link with dietary practice, including the levels of dietary cholesterol and fat and the ratio of polyunsaturated to saturated fats.

Although some animal data support the contention that dietary manipulations involving sugars may potentiate risk factors for cardiovascular disease such as hypertension, hypercholesterolemia, and insulin resistance, the Task Force found that these relationships are less clear in studies in human populations (Ref. 3). Changes in serum lipids in response to sugars ingestion were reported in short-term animal and clinical experiments (Ref. 3). However, the Task Force considered these changes to be of limited significance because the observed changes were transient and disappeared with prolonged exposure to high sugar diets. The mechanism for this apparent adaptation to changes in dietary composition is poorly understood.

In a 1-year study of pigs (Ref. 38), there were no indications of cardiovascular pathological processes as a result of high sucrose consumption. This finding is important because the pig is generally considered to be an excellent model for dietary requirements and metabolic processes in the human. The dietary levels of sugars in the pig study were substantially higher than the current level of sugars consumption by the general population.

b. Four comments asserted that there is no convincing epidemiological or clinical evidence of a relationship between sucrose consumption and coronary heart disease. Several comments claimed that the known risk factors in the development of heart diseases were unrelated to sugars consumption.

The agency agrees with these comments. The Task Force found that no epidemiological or clinical survey evidence that would establish a link between sugars intake and cardiovascular disease had been reported since the Select Committee review of the safety of sucrose (Ref. 1). Accordingly, the Task Force concluded that there is no credible evidence that dietary sugars are an independent risk factor for coronary artery disease in the general population (Ref. 3).

The Select Committee report did not establish that sugars consumption is a primary dietary factor in the etiology of cardiovascular disease. The Select Committee emphasized that the primary dietary factors involved in the etiology of the disease are the nature and amount of fat in the diet.

c. Based on its review and evaluation of the comments and the reports of the Select Committee and the Task Force, the agency concludes that current data do not support the contention that sugars are a primary or an independent risk factor for cardiovascular disease such that the reduction in current levels of sugars intake in the general population would reduce the risk of this disease.

10. Nutritional Deficiencies

a. One comment asserted that current levels of sucrose consumption may cause nutritional deficiencies and suggested limiting consumption of sweeteners in any form in which they are not combined with significant proportions of other foods of high nutritive value. The comment cited two studies in support of its arguments (Refs. 39 and 40). One study showed thiamine deficiencies in certain populations when diets high in "empty calories" are consumed, and the other study showed riboflavin deficiency in an urban teenage population that relies heavily on snack food.

The agency has considered this comment along with the references cited and the reports of the Task Force and the Select Committee. In its report, the Task Force determined that any serious and sustained disturbance of the dietary balance has the potential to cause nutritional deficiencies, but that sucrose and other sweeteners do not have a unique ability to cause such a disturbance (Ref. 3). The Select Committee found that sucrose intake in excessive amounts could have an effect on intake of other nutrients and could result in a nutrient imbalance (Ref. 1). The agency, however, cannot prevent consumers from adopting poor diets.

The Task Force concluded that the studies cited by the comments to show that sugars consumption caused deficiencies in certain vitamins can also be interpreted as demonstrating the failure of the test population (teenagers) to consume foods that are rich in riboflavin and thiamine (Ref. 3). The vitamin deficiency can be seen not as a result of sucrose consumption per se but as a result of diet selection. Supporting this view is the fact that the Task Force found no firm evidence that sugars interfere with the bioavailability of vitamins, minerals, or trace nutrients (Ref. 3). Thus, under ordinary conditions of use, there is no evidence that sugars cause vitamin deficiencies.

b. Five comments asserted that sugar consumption does not cause nutritional deficiencies. Three comments questioned the validity of the results of the studies cited above because of design deficiencies in those studies. Other comments stated that it is the absence of nutrients in the diet that causes nutritional deficiencies. One comment cited an article that it claimed contained data that suggested that sucrose consumption could have a positive effect on nutrient availability because sucrose can be used as a vehicle for vitamin enrichment (Ref. 41).

The agency evaluated the article cited in the latter comment. This article generally addressed sucrose as a vehicle for fortification but did not provide convincing evidence that sucrose actually enhanced the uptake of these nutrients. Therefore, this article does not provide an adequate basis for concluding that sucrose has a positive effect on nutrient availability.

The Select Committee in its report on sucrose found that overconsumption of sucrose could possibly result in dietary imbalances (Ref. 1). The Select Committee also found that it is possible that some individuals who consume excessive amounts of sucrose may exclude adequate amounts of other foods that furnish required nutrients. However, these individuals do not represent the normal population.

c. The agency concludes that any sustained disruption of dietary balance has the potential to cause nutrient deficiencies, but that sweeteners do not have a unique ability to cause dietary imbalances. This conclusion is in agreement with findings reported in the Select Committee reports. The agency further concludes that neither the comments nor the Task Force report demonstrated that there is a unique relationship between sugars consumption and nutritional deficiencies.

11. Behavior

One comment suggested possible behavioral effects from sugars consumption and suggested that the effects of sugars consumption on hypoglycemia, which may affect behavior, be investigated. This comment, however, did not provide any data to support the suggestion. Five

comments claimed that the available data do not demonstrate an association between sucrose consumption and hyperactive behavior (i.e., attention-deficit disorder) in either hyperkinetic or normal children.

The agency has reviewed the comments relative to sugars consumption and behavior. The agency notes that several scientific conferences on diet and behavior (Refs. 46 and 47) have reviewed the effects of foods on behavior since the Select Committee's reviews in 1976. General scientific concerns have centered on: (1) The effects of sugars consumption on neurotransmitter concentrations in the central nervous system and on behavior in animals; (2) the effects of sugars on human behavior (principally hyperactivity, i.e., attention-deficit syndromes in children); and (3) the influence of sugars consumption on appetite, hunger, and food consumption. Sucrose has been a central focus, although limited data exist for the other sugars.

A number of the reports on human behavior relate to "reactive" of postprandial hypoglycemia, which is marked by decreased blood glucose after eating and is associated with a characteristic group of clinical symptoms (sweating, palpitation, piloerection, trembling, and other stress symptoms) coincident with the low level of plasma glucose and subsiding as glucose levels rise. Reactive hypoglycemia has been reported, particularly in the psychological literature and the lay press, to be correlated with a wide range of behavioral and mood changes in adults, including difficulty in thinking, depression, irritability, and neurological disturbances.

The Task Force reported that there is a paucity of well-controlled scientific studies on this subject (Ref. 3). With respect to the well-controlled studies that do exist, the Task Force concluded that there is no substantial evidence that the consumption of sugars is responsible for adverse behavioral changes in children or in adults (Ref. 3).

Based on the data available to the Task Force, the agency concludes that:

(1) There is no conclusive experimental evidence that sugars consumption causes significant changes in the behavior of children or adults. While some authors have reported a correlation between sugars consumption and behavioral changes such as hyperactivity, restlessness, and distractibility in children, these studies were in many cases poorly controlled. Other investigations, working under more controlled conditions, have failed to demonstrate increased activity or have demonstrated instead drowsiness and decreased activity.

(2) The suggestion that reactive hypoglycemia is correlated with behavioral or mood changes likewise cannot be substantiated by available experimental evidence. The possibility cannot be ruled out that a relatively small group of individuals may react idiosyncratically to sugars consumption. However, there is no scientifically validated evidence demonstrating that current levels of sugars consumption adversely affect behavior.

12. Sucrose and Caffeine

One comment suggested that caffeine and sucrose act synergistically on behavior. Three comments, however, asserted that there are no data that demonstrate that sucrose and caffeine have such an effect on behavior.

The agency has reviewed these comments and notes the absence of data on this subject. The agency finds that there is no scientific basis for suggesting that sugars and caffeine consumption would have synergistic effect on behavior.

13. Brain Neurochemistry

One comment suggested that sucrose may affect behavior by altering neurotransmitter levels in the brain and cited data showing a link between high carbohydrate meals and increased brain serotonin levels (Refs. 42 and 43). Another comment asserted that there are no data that establish a connection between behavior and brain serotonin levels, and that this alleged connection is merely conjectural.

The agency has reviewed these comments. The Task Force determined that some evidence exists from animal studies that high levels of intake of carbohydrates (including sugars) may modify the transport of amino acid precursors of neurotransmitters into the brain and may alter neurotransmitter levels in the brain (Ref. 3). The Task Force also found that the ability of the changes in neurotransmitter levels to modify behavior, although speculated upon, has not been shown by controlled clinical or preclinical experiments (Ref. 3).

The Task Force concluded that the ability of dietary sugars intake to modify behavior through effects on central nervous system neurotransmitter metabolism has not been demonstrated (Ref. 3).

The agency finds that, considered together, the comments and the Task Force report do not provide any basis for substantive health concerns about sugars consumption and behavior that would call into question the GRAS status of the use of corn sugar, corn syrup, invert sugar, and sucrose.

14. Consumption

a. One comment made several assertions regarding the current level of sweetener consumption. The comment stated that the average American consumes 2 pounds of refined sweeteners a week, and that refined sweeteners constitute one-fifth of the American diet. It stated that a study showed that some 10-year-olds consumed up to 48 percent of their total calories as refined sweeteners (Ref. 35).

The agency disagrees with the conclusions that the comment drew from the data on current levels of sweetener consumption by the American population. Specifically, the agency does not agree that the average American consumes 2 pounds of sweeteners per week. This figure appears to be based on USDA disappearance data. It is an overestimate of intake and would be a misuse of these data. The USDA per capita disappearance data represent approximate estimates of the total amount of sweeteners available for consumption by the U.S. population. These data do not account for the losses and wastes of sweeteners that occur between the time the sweeteners are shipped from manufacturers and the time they are actually consumed. However, these data are useful for estimating trends of sugars consumption over the years.

The agency estimates, based on USDA Nationwide Food Consumption Survey data, that the average American consumes less than 1 pound of added sugars per week (Ref. 3). In evaluating the comment's assertion that one-fifth (20 percent) of the American diet consists of sweeteners, the agency noted that this level of calorie intake from sugars added to the diet approximates the 90th percentile intakes in the United States. The Task Force estimated (Ref. 3) that average consumers obtain only 11 percent of total calorie intake from added sugars.

The agency has reviewed the reference (Ref. 35) cited by the comment to support its assertion that some 10-year-olds consume up to 48 percent of calories as refined sweeteners. FDA could not confirm this figure from the reference because the reference reported the amount of calories from total sugars (including both naturally occurring sugars and sugars added to foods) and not the amount from added sweeteners only, as claimed by the comment.

The agency concludes that the comment did not provide valid evidence to support its claim that the current level of sugars consumption is higher than that estimated by the Task Force. Therefore, the agency finds that there is no basis for modifying the Task Force's estimate of sugars consumption in response to this comment.

b. Three comments addressed changes in sweetener consumption over time. One comment stated that consumption of refined sweeteners has risen 50 percent (from a level of 12 percent to a level of 18 percent of calories) since 1910. However, another comment asserted that a comparison of today's refined sweetener consumption with that of 1910 is without significance because of changes in lifestyles. Two comments presented USDA disappearance data on sweetener availability. One comment asserted that sweetener consumption increased from 1900 to 1920 and remained relatively constant from 1920 to 1980. This comment also argued that recent data showed a downward trend in sucrose consumption and an increase in corn sweeteners consumption (Ref. 44). The other comment asserted that total sweetener intake has been constant from 1970 through 1985.

The agency agrees that per capita disappearance of sweeteners shows a trend toward increased consumption of sweeteners since 1910, the overall increase being about 50 percent. However, the agency finds that there was a relatively steep increase between 1910 and 1930, but that during the period from 1930 to 1970, the availability of sweeteners showed only a small overall increase with considerable yearly fluctuations (Ref. 3). Most importantly, the data show that the availability of sweeteners remained fairly constant from 1970 through 1985 (Ref. 3), suggesting that total sweetener consumption has remained relatively constant since the review by the Select Committee.

The agency concludes that the comments have not presented new data that show a significant increase in sweetener consumption that would call into question the safety of the current use of sweeteners. Therefore, the agency finds that these comments do not provide any reason to modify the Task Froce conclusions on the trends in sweetener usage.

c. One comment asserted that American consumption of sweeteners is excessive and is associated with various health problems. The comment made several allegations and cited the data discussed above on current levels of sweetener consumption and the 50 percent rise in sweetener consumption since 1910 to support its assertions concerning overconsumption of sweetener (Ref. 8). Two comments responded to the allegation of overconsumption of sweeteners by showing (through the trend data on sweetener availability discussed above) that total sweetener consumption has remained relatively constant.

The agency finds that none of the comments provided data that were relevant to proving or disproving the alleged overconsumption of sweeteners by the U.S. population. The two sets of data addressed either some absolute measure of current consumption or trends in consumption. Neither set of data establishes that the current level of sweetener consumption by the U.S. population is associated with a health risk.

d. Based on these assessments, the agency concludes that, with the exception of effects of sweetener consumption on dental caries formation, current levels of sweetener consumption do not constitute "overconsumptions."

Therefore, the agency finds that the comments did not provide a basis to call into question the Select Committee's conclusions on the safety of corn sugar, corn syrup, invert sugar, and sucrose. As a result, FDA finds that these comments do not provide a basis for modifying the GRAS status of the use of these ingredients.

15. Conclusions Regarding GRAS Status

The agency proposed to affirm the GRAS status of corn sugar, corn syrup, and invert sugar and of sucrose based on the safety evaluations and conclusions of the Select Committee. The agency has considered all the comments on these proposals, including those that asserted possible adverse health effects from sweetener consumption. In considering these comments, the agency has assessed whether the information in the comments together with information in the Task Force report provide evidence that raises significant doubts as to the safety of sugars.

The agency finds that, in most cases, the comments raised issues that had been addressed by the Select Committee in its reports on corn sugar, corn syrup, and invert sugar and on sucrose, and that the comments did not provide evidence that would warrant a change in the Select Committee's conclusions. In a few cases the comments provided new data and raised issues that had not been addressed by the Select Committee in its reports. In its review of the safety of sugars consumption, however, the Task Force evaluated these new data and issues, as well as other data on the issues that were available in the published literature. The Task Force found that these data did not provide sufficient evidence of any health concerns from sugars consumption to bring into doubt the Select Committee's conclusions regarding the safety of corn sugar, corn syrup, invert sugar, and sucrose. The agency has reviewed these comments, the Select Committee's report, and the report of the Task Force and agrees with the Task Force for the reasons previously set out. Therefore, the agency is not modifying the GRAS affirmation regulations that it proposed for these ingredients.

C. Comments Requesting Agency Action to Increase Consumer Information on Sugars

1. Sugars Labeling

Five comments supported some form of "sugar" labeling of food. The comments differed in what sugars they wanted labeled. One comment specifically requested that "added sugars" be labeled. Other comments requested declaration of "total sugars" because labeling only "added sugars" would not give a complete picture of the sugars content of the food.

The comments also varied in their concept of sugars labeling. One comment requested mandatory labeling of sugars in food without specifying what the label would say. Other comments wanted a modification of nutrition labeling either to include "sugar" or to separate the carbohydrate portion of nutrition labeling into "simple sugars" and "complex carbohydrates." One comment requested voluntary sugars labeling.

One comment that was opposed to sugars labeling asserted that no reason exists to single out sugars for mandatory declaration, and that more practical methods exist for disseminating information about the sugars content of foods. The comment requested that FDA consider sugars labeling only in the context of a reevaluation of nutrition labeling and the total food label.

The agency acknowledges that the Select Committee recommended that FDA require improved labeling of the sugars content of food. The agency further agrees that to provide useful information to consumers, any labeling system should include both added and naturally occurring sugars. However, because quantitative labeling of sweeteners involves issues beyond the scope of this safety review and is not necessary for the GRAS affirmation of corn sugar, corn syrup, invert sugar, and

sucrose, the agency is not taking any action in response to these comments. Individuals who wish to request agency consideration of a specific modification of the ingredient labeling or nutrition labeling regulations to provide for sugars labeling may submit a citzen petition under 21 CFR Part 10.

2. Educational Campaign

Four comments supported an educational program related to sugars and health. One comment specifically requested that HHS mount an educational compaign on health effects of sugars consumption. Two comments supported an educational campaign to disseminate scientific facts about sucrose's role in the diet and to refute popular mythology about sucrose. One comment supported an educational effort to help consumers practice better eating habits.

The agency has reviewed these comments and notes that these comments present differing views about the appropriate focus and content of an educational campaign. One comment wanted the campaign to promote the view that sugar consumption causes adverse health effects. Two comments appeared to want an educational campaign to counteract the view expressed in the first comment. The fourth wanted an educational campagn on total dietary management, with sugars discussed within this broader context.

The agency finds that the last approach is the most appropriate based on the findings both in the Select Committee's reports on corn sugar, corn syrup, and invert sugar and on sucrose and in the Task Force's review of sugars. USDA and HHS recently published "Dietary Guidelines for Americans" (Ref. 45), which contains seven dietary guidelines for staying healthy. One of these guidelines, "Avoid too much sugar," discourages overconsumption of sugars. The agency concludes that the current affects in promoting the dietary guidelines provide an adequate educational campaign on the health effects of sugars consumption.

D. Lead and Cadmium Content of Sweeteners

In the proposals on corn sugar, corn syrup, and invert sugar and on sucrose, FDA announced the results of a survey that the agency conducted in 1974 on heavy metals in food. The analytical results showed that 6 of 71 samples of refined sugar tested contained high levels of cadmium and lead. Because the agency was unable to confirm the results of this survey in a resurvey in 1980, FDA requested the submission of data on cadmium and lead levels in refined and unrefined cane and beet sugars, as well as in corn sugar, corn syrup, and invert sugar. The agency requested that the sugar industry report the levels of heavy metals found at each stage of the manufacturing process.

FDA received three comments in response to this request. One comment noted that a draft paper by the two FDA scientists attributed the occasional high cadmium and lead values in the 1974 survey of sucrose samples to difficulties in the method used to ash the samples. The comment stated that when the agency employed a new dry ashing procedure, the previous results could not be duplicated. Although the comment promised to submit more information on cadmium and lead analysis, the agency has never received this information.

One comment claimed that information on lead and cadmium levels in corn syrups and sucrose during processing is not generally available. As an alternative, the comment suggested that producers be allowed to furnish data on the finished product.

The final comment cited a report in the *Journal of Agriculture and Food Chemistry* (24(1), 1976) by the USDA's Southern Regional Research Center, which listed lead and cadmium levels in raw and refined sucrose at less than 0.1 part per million for lead and 0.01 part per million for cadmium. The comment claimed that its own recent analyses of the lead and cadmium content in refined and unrefined sweetners have confirmed these results.

The agency has reviewed these comments along with other information generated by the scientific literature update on sucrose and corn sugars. The agency has also reviewed results of FDA's 1980 resurvey which showed the estimated lead and cadmium intake levels from sucrose to be less than 0.01 and 0.008 microgram per day, respectively. These levels are much lower than those that were reported in the previous survey.

The agency, after analyzing all the available data, finds that the first survey may have been in error because of the ashing techniques used to prepare the samples. More recent data in which revised sample preparation techniques were used demonstrate that the contribution of lead and cadmium from sugar consumption to the total dietary load for these two contaminants is minimal and represents less than 1.5 percent of total dietary consumption of lead and cadmium. The agency, therefore, concludes that the levels of lead and cadmium in sucrose do not represent a hazard to the public health, and that it is not necessary to set limits for these contaminants in these regulations. Therefore, the agency has not modified the GRAS affirmation regulation for corn sugar, corn syrup, invert sugar, and sucrose to incorporate specifications for lead and cadmium.

E. Comments Regarding Proposed Identity and Specifications

1. Identity and Specifications for Corn Sugar and Corn Syrup

Two comments were received that asked that the proposed GRAS affirmation regulations for corn sugar (§ 184.1857) be made compatible with 21 CFR 168.110 (dextrose anhydrous) and 21 CFR 168.111 (dextrose monohydrate) by modifying the regulation to include the monohydrate form of the sugar. The comments also asked that the proposed regulation for corn syrup (§ 184.1865) be modified to make it consistent with 21 CFR 168.120 (glucose sirup) and 21 CFR 168.121 (dried glucose sirup). One of the comments asked that the title of the corn sugar regulation be changed to "Dextrose." One comment requested that the liquid form of corn sugar be included in the corn sugar regulation.

The agency has reviewed these comments and finds that its safety review covered both the monohydrate and the anhydrous forms of corn sugar, and that it is appropriate for the GRAS affirmation regulation for corn sugar to be modified to include both of these forms of corn sugar. The agency has also reviewed the request that the GAS affirmation regulation for corn syrup (glucose sirup) be made compatible with the descriptions in §§ 168.120 and 168.121. The agency concurs that it is appropriate for the GRAS affirmation regulation for corn syrup to be compatible with the descriptions in §§ 168.20 and 168.21, including use of the synonym "glucose sirup." The agency has modified the final rule to incorporate these changes.

The agency has concluded that no change in the title of the regulation for corn sugar is warranted because corn sugar is the name of the ingredient whose safety was reviewed by the Select Committee and evaluated during the GRAS review. The name adequately describes the material covered by the regulation and does not lead to deception of consumers. The agency will, however, include "dextrose" in the regulation as a commonly used synonym for corn sugar. FDA has modified the final rule to incorporate this change.

The agency has also reviewed the comment requesting that the liquid form of corn sugar be included in the corn sugar regulation. The agency finds that

although liquid corn sugar does not meet the specifications for corn sugar, it does meet the identity and specifications of corn syrup and is covered under that regulation. Accordingly, the agency is not modifying its final rule to incorporate the requested change.

The agency also notes that although the specifications for corn sugar describe a crystalline material, the description of corn sugar in proposed § 184.1857(a) did not describe the material as crystalline. Therefore, to resolve this confusion and to provide consistency between the description of corn sugar in § 184.1857(a) and the specifications for corn sugar in § 184.1857(b), the agency has added a sentence to paragraph (a) specifying that the hydrolyzed corn starch is refined and crystallized.

In addition, the agency notes that the description of sucrose in proposed § 184.1854(a) does not explicitly cover the extraction, by pressing, of sugar cane juice from sugar cane or beet juice from sugar beets and also does not mention the evaporation of the extracted sugar cane juice or beet juice. Therefore, the agency has modified § 184.1854(a) to include "pressing" as a possible extraction procedure and "evaporated" as a step in the refinement of sucrose.

The agency is also aware that glucose syrup and dextrose may be prepared from starch sources other than corn starch. The agency has not included these sources in this regulation because this safety review covered only the product derived from corn. The agency will consider modifying the regulations for corn syrup and corn sugar if adequate information on the possible impurities and the method of manufacture of these food ingredients from starch sources other than corn starch is submitted to the agency for consideration. Interested persons may petition the agency to amend the GRAS regulations for corn syrup and corn sugar by submitting a GRAS affirmation petition in accordance with 21 CFR 170.35.

2. Identity and Manufacture of Invert Sugar

FDA received two comments that requested that hydrolysis with safe and suitable acids be included in the methods of preparing invert sugar, and that the description for invert sugar be modified to include sucrose as a constituent of this substance.

One of the comments also requested that the method of manufacture described in the regulation include the use of ion exchange resins.

The agency has reviewed the comments as well as data in its files on the manufacture of corn sweeteners. The agency notes that safe and suitable acids have been used traditionally to hydrolyze polysaccharides and to manufacture corn sugar and corn syrup. Therefore, the agency is of the opinion that there are no safety reasons why safe and suitable acids should not be used in the manufacture of invert sugar from sucrose. Accordingly, the agency has modified the regulation for invert sugar to include hydrolysis of sucrose with safe and suitable acids in the description of how this substance is manufactured.

However, in the case of ion exchange resins, the agency has no basis to evaluate the safety or suitability of their use in the manufacture of invert sugar. In the past, the agency has listed ion exchange resins as food additives in 21 CFR 173.25 and has required specific food additive approval for their use. Section 173.25 has no listing for use of an ion exchange resin in the manufacture of invert sugar. In addition, the comment provided no information on the identity of the ion exchange resins or on the safety or the suitability of such use. Therefore, the agency has not modified the regulation for invert sugar to inlcude the use of ion exchange resins.

The agency has also reviewed the requests that the description of invert sugar include the presence of sucrose. The agency has confirmed that its definition of invert sugar in 21 CFR 145.3(e) and 146.3(e) provides for the presence of unhydrolyzed sucrose in invert sugar.

FDA is of the opinion that the GRAS regulation for invert sugar should be compatible with the standard of identity for invert sugar in §§ 145.3(e) and 146.3(e). Therefore, the agency has modified § 184.1859(a) to provide for the presence of unhydrolyzed sucrose in the description of invert sugar.

IV. Procedural Issues

In the proposals, FDA stated that it would work with the Committee on Codex Specifications (now known as the Committee on Food Chemicals Codex) of the National Academy of Sciences to develop acceptable specifications for sucrose and invert sugar used as direct human food ingredients. The agency also stated that it would incorporate these specifications into the regulations when they are developed. The date, however, work on the specifications is still incomplete. Until the specifications are developed, sucrose and invert sugar for direct food use must comply with the description in §§ 184.1854 and 184.1859, respectively, and be of food-grade purity in accordance with 21 CFR 182.1(b)(3) and 170.30(h)(1).

The agency has carefully considered the potential environmental effects of this action and 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 ws considered under FDA's final rule implementing the National Environmental PolicyAct (21 CFR Part 25).

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Docket Management Branch (address above).

V. References

The following references have been placed on display in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS–69), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

2. "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar and Food Ingredients" (SCOGS–50), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of

American Societies for Experimental Biology, 1976.

3. Glinsmann, W.H., H. Irausquin, and Y.K. Park, "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Report of Sugars Task Force, 1986, *Journal of Nutrition*, 116(115):51, 1986.

4. Letter from Acting Director of the Center for food Safety and Nutrition to the Center for Science in the Public Interest, September 26, 1988.

5. Letter from Associate Commissioner for Regulatory Affairs to Maura (Jinny) Zack, March 4, 1988.

6. "Subcommittee on Review of the GRAS List (Phase II). A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," Committee on Food Protection, Division of Biology and Agriculture, National Research Council, 1972.

7. Barry R.D., "High fructose corn sirup and pure fructose: potential consumption and substitution for sugar by 1990." Presented to the American Medical Association Resource Conference on HFCS and Fructose, Chicago, IL, October 2, 1984.

8. "Recommended Dietary Allowances," 9th Ed., National Research Council, 1980.

9. Burt, B., and S. Eklund, "Sugar Consumption and Dental Caries: Some Epidemiological Patterns in the United States," *in* "American Dental Association Health Foundation, Foods, Nutrition and Dental Health," Chicago, Pathotox, p. 171, 1981.

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20. Zavoroni, I., et al., "Effect of Fructose Feeding on Insulin Secretion and Insulin Action in the Rat," *Metabolism*, 29:970, 1980.

21. Beck-Nielsen, H., O. Pedersen, and H.O. Lindskov, "Impaired Cellular Insulin Binding and Insulin Sensitivity Induced by High-Fructose Feeding in Normal Subjects," *American Journal of Clinical Nutrition*, 33:273, 1980.

22. Reiser, S., et al., "Isocaloric Exchange of Dietary Starch and Sucrose in Humans. I. Effects on Levels of Fasting Blood Lipids," *American Journal of Clinical Nutrition*, 32:1659, 1979.

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41. "Fortification of Sugar with Vitamin A in Central American and Panama," Institute of Nutrition for Central Americas and Panama, Guatemala, 1974.

42. Wurtman, R.J., "Precursor Control of Transmitter Synthesis," in "Nutrition and the Brain," Vol. 5, New York, Raven Press, 1979.

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44. "Sugar and Sweetener: Outlook & Situation," U.S. Department of Agriculture, December 1982.

45. "Nutrition and Your Health: Dietary Guidelines for Americans," 2d Ed., U.S. Department of Agriculture, U.S. Department of Health and Human Services, 1985.

46. Lieberman, H.R., and R.J. Wurtman, editors, "Research Strategies for Assessing the Behavioral Effects of Foods and Nutrients," Proceedings of a conference at Massachusetts Institute of Technology, Pergamon Press, Elmsford, 1982.

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List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices flavorings.

21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 438, 371); 21 CFR 5.10, 5.61.

§ 182.1 [Amended]

2. Section 182.1 *Substances that are generally recognized as safe* is amended in paragraph (a) by removing the word "sugar," from the second sentence.

§ 182.90 [Amended]

3. Section 182.90 *Substances migrating to food from paper and paperboard products* is amended by removing "Corn sugar (sirup)," "Invert sugar," and "Sucrose" from the list of substances.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

5. Section 184.1854 is added to Subpart B to read as follows:

§ 184.1854 Sucrose.

(a) Sucrose ($C_{12}H_{22}O_{11}$, CAS Reg. No. 57–50–11–1) sugar, cane sugar, or beet sugar is the chemical β-D-fructofuranosyl-α-D-glucopyranoside. Sucrose is obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated.

(b) FDA is developing food-grade specifications for sucrose in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a parity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

6. Section 184.1857 is added to Subpart B to read as follows:

§ 184.1857 Corn Sugar.

(a) Corn sugar ($C_6H_{12}O_6$, CAS Reg. No. 50–99–7), commonly called D-glucose or dextrose, is the chemical α-D-glucopyranose. It occurs as the anhydrous or the monohydrate form and is produced by the complete hydrolysis of corn starch with safe and suitable acids or enzymes, followed by refinement and crystallization from the resulting hydrolysate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 97–98 under the heading "Dextrose," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 1. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. Section 184.1859 is added to Subpart B to read as follows:

§ 184.1859 Invert sugar.

(a) Invert sugar (CAS Reg. No. 8013–17–0) is an aqueous solution of inverted or partly inverted, refined or partly refined sucrose, the solids of which contain not more 0.3 percent by weight of ash. The solution is colorless, odorless, and flavorless, except for sweetness. It is produced by the hydrolysis or partial hydrolysis of sucrose with safe and suitable acids or enzymes.

(b) FDA is developing food-grade specifications for invert sugar in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

8. Section 184.1865 is added to Subpart B to read as follows:

§ 184.1865 Corn Syrup.

(a) Corn syrup, commonly called "glucose sirup" or "glucose syrup," is obtained by partial hydrolysis of corn starch with safe and suitable acids or enzymes. It may also occur in the dehydrated form (dried glucose sirup). Depending on the degree of hydrolysis, corn syrup may contain, in addition to glucose, maltose and higher saccharides.

(b) The ingredient meets the specifications as defined and determined in § 168.120(b) or § 168.121(a) of this chapter, as appropriate. FDA, in cooperation with the National Academy of Sciences, is undertaking a study to determine if additional food-grade specifications for corn syrup are necessary.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: October 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25583 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 966

[Docket No. R–88–1020; FR–1164]

Tenancy and Administrative Grievance Procedure for Public Housing; Notice Suspending Effective Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice suspending effective date for the Tenancy and Administrative Grievance Procedure for Public Housing.

SUMMARY: A final rule to amend lease and grievance procedures for the public housing program was published on August 30, 1988 (53 FR 33216), Docket No. R–88–1020; FR 1164. On October 14, 1988, HUD published a notice announcing that the final rule would become effective on November 7, 1988 (52 FR 40220, 40221).

Pursuant to a Temporary Restraining Order in National Tenants Organization, *et al.* v. Samuel R. Pierce (United States District Court for the District of Columbia, Civil Action No. 88–3134), HUD hereby withdraws the notice of effective date previously published, to maintain the status quo pending hearing on a motion for preliminary injunction by plaintiffs in this action.

The prior lease and grievance regulations (24 CFR Part 966) remain in effect until publication of further notice by HUD. Accordingly, the effective date as published on October 14, 1988, as it applies to the Tenancy and Administrative Grievance Procedure for Public Housing published August 30, 1988, is suspended.

DATE: Effective date of this Notice: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

Date: November 3, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-25767 Filed 11-4-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159

[DoD Directive 5200.1]

DoD Information Security Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part updates established policies and procedures of the DoD Information Security Program and implements Executive Order 12356, "National Security Program" and Information Security Oversight Office Directive No. 1, "National Security Information." This Part also delegates authority, assigns responsibilities, and authorizes the development, publication, and maintenance of DoD 5200.1-R, "Information Security Program Regulation" and other issuances that pertain to the DoD Information Security Program. At the present time, 32 CFR Part 159 is a combination of DoD Directive 5200.1, June 7, 1982, and DoD 5200.1-R. This revision separates the two documents. DoD 5200.1-R will be submitted as a separate part (32 CFR Part 159a) at a later date.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. F. Cook, Office of the Deputy Under Secretary of Defense for Policy, Directorate for Security Plans and Programs, The Pentagon, Washington, DC 20301-2200.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 159

Classified information, Foreign relations.

Accordingly, 32 CFR Part 159 is revised as follows:

PART 159—DOD INFORMATION SECURITY PROGRAM

Sec.

Authority: E.O. 12356 and 5 U.S.C. 301.

§ 159.1 Purpose.

(a) This part updates policies and procedures of the DoD information Security Program, implements Executive Order 12356 and 32 CFR Part 2001, delegates authority, and assigns responsibilities.

(b) This part authorizes the development, publication, and maintenance of the following documents, consistent with DoD 5025.1-M.

(1) DoD 5200.1-R, "Information Security Program Regulation";

(2) DoD 5200.1-H, "Department of Defense Handbook for Writing Security Classification Guidance";

(3) DoD 5200.1-I, "Index of Security Classification Guides";

(4) DoD 5200.1-PH, "A Guide to Marking Classified Documents"; and

(5) Other DoD 5200.1-PH series issuances necessary to ensure or facilitate compliance with and implementation of DoD 5200.1-R and E.O. 12356 and 32 CFR Part 2001.

§ 159.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

(b) This part covers all information that is owned, produced by or for, or is under the control of the Department of Defense that shall be protected from unauthorized disclosure in the interest of national security under Executive Order 12356 and ISOO Directive No. 1 and all such information received by the Department of Defense from other sources, including that received from or produced pursuant to or as a result of a joint arrangement with a foreign government or international organization.

§ 159.3 Policy.

It is the policy of the Department of Defense to assure that information that warrants protection against unauthorized disclosure is properly classified and safeguarded as well as to facilitate the flow of unclassified information about DoD operations to the public.

§ 159.4 Procedures.

To carry out this policy, there is established a DoD Information Security Program that shall be administered to ensure that:

(a) Information requiring protection in the interest of national security is properly classified and safeguarded.

(b) Overclassification and unnecessary classification are avoided.

(c) Information is classified as long as required by national security considerations.

(d) Unnecessary expense to the Department of Defense, industry, and the U.S. government, resulting from protection of information no longer requiring classification, is eliminated.

(e) Declassified information is made available to the public under 32 CFR Part 285.

(f) Classified inventories are reduced to the minimum necessary to meet operational requirements, thereby affording better protection to that which remains.

(g) DoD military and civilian personnel, who require access to classified information in the conduct of official business, are familiar with the requirements of DoD 5200.1-R and E.O. 12356 and 32 CFR Part 2001, and that they comply with those requirements.

§ 159.5 Responsibilities.

(a) The *Deputy Under Secretary of Defense (Policy)* shall:

(1) Direct and administer the DoD Information Security Program, establish policy, standards, criteria, and procedures to comply with E.O. 12356, except its section 3.4.

(2) Conduct an active oversight program to ensure effective implementation of DoD 5200.1-R, Executive Order 12356, and 32 CFR Part 2001, to include security education and training.

(3) Consider and take action on complaints and suggestions from persons within or outside the government regarding the DoD information Security Program.

(b) The *Assistant Secretary of Defense (Public Affairs)* shall direct and administer a DoD Mandatory Declassification Review Program under section 3.4., E.O. 12356, and establish policies and procedures for processing mandatory declassification review requests, including appeals, under section 3.4(d) of E.O. 12356 and section 2001.32(a)(2)(iii) of Information Security Oversight Office (ISOO) Directive No. 1 [1] that make maximum use of DoD Component resources and systems established to implement 32 CFR Part 285.

(c) The *Head of each DoD Component* shall:

(1) Designate a senior official who shall be responsible for the direction and administration of the Component's Information Security Program, to include

[1] Copies may be obtained, if needed, from the Director, Information Security Oversight, General Service Administration, Washington, DC 20405.

active oversight, and security education and training programs to ensure implementation of DoD 5200.1–R within the Component.

(2) Ensure that funding and resources are adequate to carry out such oversight, and security education and training programs.

(3) Consider and take action on complaints and suggestions from persons within or outside the government regarding the Component's Information Security Program.

(4) Establish procedures to limit access to classified information to those who need to know.

(5) Develop plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. These plans shall include the treatment of classified information located in foreign countries.

(d) Pursuant to E.O. 12356, the *Director, National Security Agency/ Chief, Central Security Service,* as the designee of the Secretary of Defense, is authorized to impose special requirements with respect to the marking, reproduction, distribution, accounting, and protection of and access to classified cryptologic information. The Director, National Security Agency/ Chief, Central Security Service, will develop special procedures for the declassification review of cryptologic information. This authority may not be redelegated.

November 2, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–25699 Filed 11–4–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland Regulation 88–09]

Safety Zone Regulations; Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of emergency rule.

SUMMARY: The Coast Guard is cancelling the safety zone in Lake Erie with its center at 41–31.07′ N, 081–44.48′ W, and extending for a one thousand yard radius around that point. The zone was needed to protect life and property in connection with the search for a possible unexploded piece of ordnance beginning on September 11, 1988. The search was concluded on September 19, 1983.

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

EFFECTIVE DATE: November 7, 1988.

SUPPLEMENTARY INFORMATION: On September 27, 1988 the Coast Guard published an emergency rule in the **Federal Register** for these regulations (53 FR 37558).

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 the original regulation resulted from the report of a possible piece of unexploded ordnance in the vicinity of 41–31.07′ N, 81–44.48′ W. Coast Guard and other designated personnel conducted search activities using divers and underwater equipment deployed from patrol boats. The search yielded negative results. Having exhausted all efforts, the Captain of the Port called off the search on September 19, 1988. Additionally, investigation of the incident led to the conclusion that the object was in all probability a piece of practice ordnance, and presents a very low threat to the public safety. This cancellation serves notice with respect to the effective date, that the Captain of the Port has terminated the Emergency Rule.

List of Subjects in 33 CFR Part 165

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

Dated: October 19, 1988.

Patrick A. Turlo,

Captain of the Port, Cleveland, Ohio.

[FR Doc. 88–25725 Filed 11–4–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1–88–094]

Safety Zone Regulations; Mamaroneck Harbor, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Mamaroneck Harbor, East River, NY. This Zone is needed to protect vessels from the possible dangers and hazards to navigation associated with blasting operations in Mamaroneck Harbor, NY.

EFFECTIVE DATES: This regulation is in effect from 2:00 p.m. to 6:00 p.m. local time Monday through Friday commencing on 28th September 1988 and terminating 27th November 1988.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG G. S. Lapsley, Project Officer for the Captain of the Port, New York, and CDR R. A. Brunell, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with blasting operations in Mamaroneck Harbor, NY.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. Part 165 as amended by adding § 165.T194 to read as follows:

§ 165.T194 Safety Zone: Mamaroneck Harbor, Mamaroneck, NY.

(a) *Location.* The following area has been declared a safety zone: The waters within 800 yards of the drill barge Weeks #293 in Mamaroneck Harbor, Mamaroneck, NY. This Zone is only effective during the placing and detonation of explosives. The Weeks #293 will be working in the area seaward of Black Tom Island.

(b) *Effective date.* This reguiation is in effect from 2:00 p.m. to 6:00 p.m. local time Monday through Friday commencing on 28th September 1988 and terminating 27th November 1988.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 28, 1988.

R.C. North,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 88-25726 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88-7]

Service Contracts; "Most-Favored-Shipper" Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is adopting a Final Rule that prohibits a rate contained in a service contract to be changed during the course of the contract on the basis of unpublished offers made of any shipper of the commodity covered by the contract. However, changes to service contract rates based on published rates of the contract carrier or other carriers, whether in tariffs or service contracts, will continue to be allowed.

DATE: December 7, 1988.

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SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding in response to a Petition for Rulemaking ("Petition") filed by the International Council of Containership Operators ("ICCO"), an association of several containership operators.[1] The Petition requested that the Commission issue a rule prohibiting: (1) So-called "most-favored-shipper" ("MFS") clauses [2] in service contracts, and (2) the use of *de minimis* liquidated damages provisions in service contracts for a shipper breach of its volume commitment.[3] The Commission published the Petition in the Federal Register and invited comments.

After consideration of the forty-one comments received, the Commission published a Proposed Rule prohibiting MFS clauses in service contracts (53 FR 8775, March 17, 1988). The Proposed Rule defined a "most-favored-shipper clause" as:

> * * * a service contract provision that allows a service contract rate or rate schedule(s), or any other essential term(s), to be changed to adopt (by direct match, formula or by any other means) any provision offered to the contracting shipper or another shipper, by tariff filing, other service contract, or any other offering, by any other carrier or conference.

However, the Proposed Rule would have permitted adjustments in service contract rates based upon charges in a carrier's or conference's own tariffs or service contracts. Accordingly, proposed § 581.5(a)(4) stated that the essential terms of a service contract:

> May incorporate by reference additional charges, surcharges, allowances, or adjustment factors as set forth in the service contract carrier's or conference's tariff of general applicability or service contract essential terms publication in the same trade in effect on the date of execution of the service contract. The reference must be made by specific FMC tariff or essential terms publication number to an active publication. The service contract may also provide for adjustments in such charges as effected by adjustments in the carrier's or conference's tariff of general applicability or essential terms publication. Each service contract shall describe any restriction(s) or limitation(s) which apply to such adjustments.

The Commission declined to propose any regulations dealing with the issue of the level of liquidated damages. Although the Commission determined that it had the legal authority to issue rules in this area, it concluded that such action was not warranted at the time.

Comments on the Proposed Rule were received from thirty-eight interested parties. These comments can be divided into two categories: (1) Shippers, shippers' associations and other shipper groups ("Shipper Comments"),[4] and (2) carriers, conferences and other associations ("Carrier Comments").[5] Comments were also received from two members of Congress—the Honorable John B. Breaux, Chairman of the Merchant Marine Subcommittee of the Senate Committee on Commerce, Science, and Transportation and the Honorable Walter B. Jones, Chairman of the House Committee on Merchant Marine and Fisheries.[6]

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[1] The following were members of ICCO at the time the Petition was filed: American President Lines, Ltd; Atlantic Container Line Services Ltd.; The Australian National Line; Ben Line Containers Ltd.; Blue Star Line Ltd.; Compagnie Generale Maritime, CMB S.A.; Crowley Maritime Corporation; the East Asiatic Company Ltd. A/S; Evergreen International Corporation; Societa Finanziari Maritima (Finmare); Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck; Hapag-Lloyd AG; Lykes Bros. Steamship Co., Inc.; A.P. Moller (Maersk Line); Mitsui O.S.K. Lines, Ltd.; Koninklijke Nedlloyd Groep N.V.; Neptune Orient Lines, Ltd.; Nippon Yusen, Kaisha; Orient Overseas Container Line Ltd.; Overseas Containers Limited; Sea-Land Service, Inc.; South African Marine Corporation, Limited; Transatlantic Shipping Company, Limited; Trans Freight Lines, Inc.; Transportacion Maritima Mexicana, S.A. de C.V.; United Arab Shipping Company (S.A.G.); United States Lines, Inc.; and Wilh. Wilhelmsen.

[2] ICCO identified two distinct types of MFS clauses. Under the first, if the contract carrier or conference offers to any other shipper (by service contract or by tariff) a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive the lower rate. The second type is referred to by ICCO as a "Crazy Eddie" clause. Under this arrangement, if, during the contract term, the contract carrier or any other carrier offers the contract shipper or any other shipper (by service contract, by tariff, or by other means), a lower rate for that commodity for that service than is provided to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate from the contract carrier.

[3] ICCO would classify as "*de minimis*," damages for cargo shortfall that are less than seventy-five percent of the contract rate.

[4] Shipper Comments were submitted by: (1) American Paper Institute, Inc.; (2) Wine and Spirits Shippers Association, Inc.; (3) First International Shippers Association; (4) National Industrial Transportation League; (5) E. I. Du Pont de Nemours and Company; (6) American Institute for Shippers' Associations, Inc.; (7) Chemical Manufacturers Association; and (8) Subaru of America.

[5] Carrier Comments were submitted by: (1) Associated Container Transportation (Australia) Ltd.; (2) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference; (3) Inter-American Freight Conference; (4) Gulf-Europe Freight Association, North Europe-U.S. Gulf Freight Association, U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference; (5) Mitsui O.S.K. Lines, Ltd.; (6) Nippon Yusen Kaisha; (7) Blue Star Line, Ltd.; (8) Transpacific Westbound Rate Agreement; (9) Asia North America Eastbound Rate Agreement; Israel Eastbound Conference, Mediterranean North Pacific Coast Freight Conference, and South Europe/U.S.A. Freight Conference; (10) Seafarers International Union of North America, AFL-CIO; (11) EAC Lines Transpacific Service, Ltd.; (12) Transportation Institute; (13) United Shipowners of America; (14) Maritime Institute for Research and Industrial Development; (15) Council of European and Japanese National Shipowners' Associations; (16) National Customs Brokers & Forwarders Association of America, Inc.; (17) Atlantic & Gulf/West Coast of South America Conference, United States Atlantic & Gulf/Ecuador Conference, United States Atlantic & Gulf Hispaniola Steamship Freight Association, United States Atlantic & Gulf/Southeastern Caribbean Conference, and United States/Columbia Conference; (18) ICCO; and (19) New York Foreign Freight Forwarders and Brokers Association.

[6] On April 29, 1988, the Commission served notice that it had completed an environmental assessment of this proceeding and had determined that it would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Summary of Comments

In light of the number of submissions and the fact that many of the commenters make the same arguments, the position taken by each and every commenter will not be individually summarized. Instead, comments of certain parties representative of the basic carrier or shipper positions will be presented and addressed. Unique comments of the remaining parties will also be noted.

A. Carrier Comments

ICCO recognizes that the Proposed Rule would prohibit that type of MFS clause it characterizes as the "Crazy Eddie" clause, *i.e.*, one that references another carrier's tariffs, service contracts, or other offers. It further recognizes that the Commission has indicated that service contracts containing *de minimis* liquidated damages for breach of a shipper volume commitment violate the proscriptions of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1701–1720. Nonetheless, ICCO continues to argue that *all* MFS clauses should be prohibited (including those that reference a carrier's own tariffs or service contracts) and that the Commission should by rule set the limits on acceptable liquidated damages provisions.

ICCO submits that "Crazy Eddie" clauses are contrary to section 10(b)(1) of the 1984 Act, which prohibits a carrier or conference from charging different compensation than the rates and charges that are shown in "its" tariffs or service contracts.[7] ICCO also contends that, to the extent the legislative history of the 1984 Act indicates that Congress contemplated a carrier incorporating by reference material in its service contract, it did not contemplate reference to any other entity's rates, charges, or allowances. ICCO argues that Congress intended to apply longstanding tariff policy and tariff rate filing requirements to service contracts. Among these requirements are those prohibiting a carrier's tariff from referencing rates in other tariffs, either of another carrier or the same carrier. This leads ICCO to conclude that Congress likewise intended that service contracts not reference rates in other service contracts or tariffs. As a result, ICCO contends that *all* MFS clauses, not simply what it refers to as "Crazy Eddie" clauses, should be prohibited.

ICCO further notes the requirement in section 10(b)(1) that rates be "shown" in tariffs or service contracts. It argues, however, that the rates to be charged under an MFS clause (whatever variety) are, at the time the contract is filed, unknown and, therefore, not "shown."

ICCO also asserts that MFS clauses, as a class, are contrary to section 3(21) of the 1984 Act, because they result in service contracts that do not contain a "certain" rate.[8] ICCO refers to several statements in the legislative history to the 1984 Act that it argues demonstrates a Congressional intent that service contracts include specific numerical rates or rate formulas. In addition, ICCO contends that the Commission's proposal to allow reference to a carrier's own tariff rates or service contract rates results from a misinterpretation of certain language in a Report of the Senate Committee on Commerce, Science, and Transportation that accompanied S. 504, a predecessor to the 1984 Act.[9] ICCO submits that this discussion only contemplates reference to a carrier's "additional charges" or "allowances," and not to the base rate for a commodity. In this regard, ICCO notes that the Commission's service contract rules distinguish between "rates" and "charges and allowances," citing 46 CFR 581.5(a)(3)(iii).

ICCO notes that MFS clauses were never mentioned—by a shipper or a member of Congress—in the legislative history to the 1984 Act. Moreover, ICCO considers a prohibition of MFS clauses to be a modest step, in that service contracts with staged rates for staged volumes would still remain as options. ICCO believes that MFS clauses decrease rate stability and could frustrate the system of common carriage by undercutting the requirement that service contracts be made available to similarly situated shippers. ICCO claims that, at the point when a rate reduction is triggered under a contract, otherwise similarly situated shippers may have shipped different quantities of cargo and will, therefore, receive different rate treatment.

As a technical matter, ICCO suggests that the last six words of proposed § 581.1(f) could be construed as prohibiting only reference to another *ocean common carrier's* rates and might, therefore, allow reference to rates offered by tramps, non-vessel operating common carriers ("NVOCCs") or other entities. ICCO would strike the words and substitute in their place: "by any other carrier, conference, or other person or entity."

ICCO also states that even though the Commission intended to prohibit only "Cracy Eddie" clauses, the wording of proposed § 581.5(a)(4) would appear to proscribe all MFS clauses, consistent with ICCO's position. ICCO, therefore, suggests that the word "only" be inserted before the word "additional" in § 581.5(a)(4).

Finally, ICCO reaffirms its position that *de minimis* liquidated damages clauses should be prohibited by rule. ICCO recognizes that the Commission declined to address the issue of liquidated damages by rule partly because a staff survey indicated that 6% of the contracts in a sample provided liquidated damages of $100 or less. ICCO questions whether $100 per container is an appropriate threshold for declaring damages to be *de minimis*, especially with regard to high rated commodities. In any event, ICCO believes that 6% is a sufficiently high number of service contracts to warrant rulemaking in this area. ICCO further argues that when the level of damages in a service contract for shipper breach is very low, or nothing, the stability which service contracts are intended to provide is lost. *De minimis* liquidated damages provisions also allegedly provide an incentive for unscrupulous shippers to engage in deceptive practices.

ICCO believes that a rule regarding *de minimis* liquidated damages would be more effective than adjudication on a case-by-case basis. It suggests that, at a minimum, such a rule should state that:

> service contracts including clauses specifiying damages for cargo shortfall which the Commission finds to be *de minimis* will be rejected.

[7] Section 10(b) states, in part, that: No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation or property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts * * * * 46 U.S.C. app. 1709(b)(1).

[8] Section 3(21) states: "service contract" means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party. 46 U.S.C. app. 1702(21).

[9] The discussion at issue reads: The "line-haul rate," referred to in paragraph (4) includes all compensation to be paid and must also be disclosed. Many service contracts may provide for charges or allowances for transporting or handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. To the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice. S. Rep. No. 3, 98th Cong., 1st Sess. 31–32 (1983) ("Senate Report").

However, ICCO also supports a more specific rule that would create a rebuttable presumption that, if a contract set less than a specified percentage of freight charges, the parties would have to explain to the Commission why the level is a valid attempt to approximate damages. ICCO indicates that it could accept a percentage of less than 75%, but also notes that the appropriate percentage should be determined after notice and opportunity for comment.

Most of the other Carrier Comments support the Proposed Rule but also urge that it be expended to include all MFS clauses. In addition, most request that the Commission reconsider its decision to treat the level of liquidated damages on a case-by-case basis and propose instead a rule of general applicability in this area. In support of this position, most of the Carrier Comments raise the same or similar arguments as those presented by ICCO and they will not, therefore, be repeated here. Others, however, offer additional insights which warrant specific mention.

Some conferences note that the Commission's service contract rules require that if a service contract does not provide damages for termination or breach, all cargo moving under the contract must be rerated at the otherwise applicable tariff rate—46 CFR 581.7(b)(2). They further point out that this provision was intended to prevent collusive action by the parties to avoid contract commitments. They argue, however, that *de minimis* liquidated damages undercut the purpose of this rule.

The Inter-American Freight Conference requests that if the Commission decides not to prohibit MFS clauses entirely, it should at least require such provisions to state the specific carriers or conferences whose rates may affect the service contract rates and that the rates involved must cover shipments of exactly the same commodity in the same volume as that specified in the service contract.

The New York Foreign Freight Forwarders and Brokers Association ("NYFFBA") questions whether the Commission, as a procedural matter, properly disposed of ICCO's Petition. It contends that ICCO petitioned for a rule prohibiting *all* MFS clauses, and not for the rule the Commission proposed which would allow certain MFS clauses.

NYFFBA also contends that the Proposed Rule is contrary to section 2 of the 1984 Act,[10] in that it would allow large shippers to enjoy an advantage over small shippers. Moreover, NYFFBA submits that, if MFS clauses are allowed, more shippers will choose to use service contracts, thereby eroding the common carriage system and perhaps reducing the effectiveness of the conference system.

B. Shipper Comments

Commenters representing shippers, shippers' associations and related organizations generally support the Commission's decision not to propose rules regarding liquidated damages. They also support that aspect of the Proposed Rule which would allow service contracts to reference a contracting carrier's tariff rates or other service contract rates. However, they oppose any limitation on a service contract referencing other carriers' tariff rates or service contracts.

The National Industrial Transportation League ("NITL") claims that contracts that protect both parties from adverse price consequences based on changing market conditions are an accepted business and contractual practice. Unrestricted "meeting competition" clauses (MFS clauses) are said to allow similarly situated shippers to compete without changing carriers when a foreign competitor can lower its transportation costs from another carrier. NITL argues that such clauses also allow the contracting carrier the choice of claiming the business if it elects to continue at the reduced rate, consistent with normal business practices.

First International Shippers Association believes that all of the matters included in ICCO's Petition are commercial matters subject to negotiation and that the market should not be disrupted to create additional unfair advantage for carriers. If basically contends that carriers will not agree to MFS clauses unless it is to their commercial advantage and that carriers and shippers should have the "right" to negotiate these matters.

The Wine and Spirits Shippers Association ("WSSA") contends that Congress did not intend for the Commisssion to regulate the commercial form and aspects of contract carriage. WSSA also argues that inclusion of MFS clauses will put carriers on notice of the consequences of predatory rate reductions, thereby limiting their use and enhancing revenues for all carriers. Lastly, WSSA asserts that shippers' associations are unique, in that they do not own cargo and cannot compel their members to ship exclusively through them. If a non-contracting carrier or conference undercuts the contract rate, members of the association will allegedly be induced to use those lower rates. WSSA believes that the net effect would be that the association could not meet its commitment, through no fault of its own.

The American Institute for Shippers' Associations ("AISA") advises that it represents two types of shippers' associations—(1) "full service" associations, which, it explains, handle all aspects of the freight movement as cooperatives, and (2) "rate negotiator" associations, which are said to enter into rate arrangements on behald of their collective memberships. AISA contends that the Commission lacks jurisdiction to regulate the form and substantive content of service contracts, but particularly the pricing terms. AISA believes that the Commission's interpretation of the 1984 Act's initial policy goal, as a general policy exhortation only, is incorrect. It claims that Congress specifically identified service contracts as requiring a minimum of government regulatory interference, citing S. Rep. No. 3, 98th Cong., 1st Sess. 18 (1983). It also avers that the level of rates charged shippers was another area specifically identified as being outside the Commission's jurisdiction. *Id.* at 16, 18. This governmental non-intervention policy is allegedly further underscored by the fact that the exclusive remedy for breach of a service contract is an action in court, unless otherwise agreed. 46 U.S.C. app. 1707(c).

AISA questions the Commission's determination that service contracts are "special" contracts subject to regulation. It argues that the essential terms set forth in section 8(c) of the 1984 Act are not mandatory, but merely examples of terms that may be agreed to.[11] AISA

[10] Section 2 states, in part: The purposes of this Act are—(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs * * *. 46 U.S.C. app. 1701(1).

[11] Section 8(c) states: SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—(1) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements; (2) The commodity or commodities involved; (3) The minimum volume; (4) The line-haul rate; (5) The

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further contends that a pricing term is not mandatory and that both the common law and the Uniform Commercial Code recognize contracts which do not have specific pricing terms.

AISA also takes issue with the conclusion that the works "certain rate or rate schedule" in sections 3(21) and 8(c) of the Act indicate a requirement that service contract rates be an established, numerical value rate. It argues that "certain" is not limited to previously existing events, but includes items "in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given." *Black's Law Dictionary* 204 (5th ed. 1979). This definition is said to be consistent with an alternative definition for "certain" in *Webster's New Collegiate Dictionary* 182 (1975). AISA argues that under these definitions, MFS clauses contain certain rates, because the rate can be determined from data which is specified in the contract. This interpretation is allegedly consistent with statements in the Senate Report implying that service contracts need contain no provision concerning prices, on the condition that they provide meaningful commerical disclosure. S. Rep. No. 3, 98th Cong., 1st Sess. 32 (1983).

AISA also submits that the policy of allowing a carrier to reference its own published rates but not the rates of its competitors is arbitrary. If the Commission is attempting to achieve rate certainty in service contracts, AISA claims that it must either uniformly prohibit or uniformly allow *all* MFS clauses.

Further, AISA believes that the Commission's prohibition against cross-referencing of tariffs should not be applied to service contracts. AISA states that the policy against cross-referencing tariffs to reduce the burden on shippers does not apply in the case of a service contract, where the shipper negotiates an MFS clause and voluntarily assumes the burden of ascertaining the market rate. The 1984 Act is said to consistently treat tariff rates and service contracts as distinct systems.

To the extent that rate instability is one of the reasons for prohibiting MFS clauses, AISA contends that no cause and effect relationship has been established. Because AISA views complaints against MFS clauses as complaints with the statute itself, it suggests that these issues await the results of the Commission's section 18(a) study. *See* 46 U.S.C. app. 1717(a).

AISA advises that the Department of Justice prohibits shippers' associations from requiring their members to ship exclusively through the association. As a result, shippers' associations and particularly "rate negotiator" associations are said to be susceptible to having their members raided by a contracting carrier or conference or by competing carriers.

AISA suggests that the Proposed Rule may inhibit the use of service contracts for intermodal transportation. This allegedly may occur because inland transportation contracts do allow MFS clauses. AISA explains that if a shipper can obtain an MFS clause for the domestic portion of its transportation movement but is unable to do so for the foreign portion, it may have no choice but to use a carrier's tariff rates for the ocean transportation rather than enter into an intermodal service contract. This result is argued to be contrary to the policy of the 1984 Act to develop and promote intermodal services.

AISA also maintains that the Proposed Rule is vague and does not clearly permit that which the Commission intended to permit. AISA states, for example, that while proposed § 581.5(a)(4) permits cross-referencing of a contracting carrier's "additional charges, surcharges, allowances, or adjustment factors * * *," this language does not make it clear that "rates" may be cross-referenced. AISA also believes that the Proposed Rule is broader than that requested by ICCO, in that it prohibits incorporation by reference of *any* essential term, not simply a rate term. It suggests, therefore, that the phrase "or any other essential term(s)" be deleted. Lastly, AISA takes issue with certain other wording of the Proposed Rule, in particular the meaning of the phrases "allow to be changed to adopt," "direct match, formula or by any other means," and "any other offering."

The Chemical Manufacturers Association ("CMA") states that the Commission has overstepped its proper statutory role under section 8(c) of protecting the rights of similarly situated shippers and involved itself in second-guessing the business judgments of contracting parties to protect carriers and/or their competitors. It believes that certain statements by the Commission in Docket No. 86-6, *Service Contracts*, 52 FR 23989 (June 26, 1987), delineate its proper role in this regard, and are consistent with the legislative history of the 1984 Act. The requirement in the Commission's rules that similarly situated shippers be notified of a change in essential terms due to the operation of a contingency clause (*e.g.* an MFS clause) is said to be adequate to implement section 8(c) of the 1984 Act.

CMA further contends that the Commission has failed to explain why existing rules will not ensure compliance with section 10(b)(1) of the 1984 Act, which prohibits a carrier from charging a different rate from that shown in *its* tariff or service contract. It argues that a carrier that adjusts a service contract rate in accordance with the terms of its contract is charging a rate as shown in its service contract for purposes of section 10(b)(1).

CMA views the Proposed Rule as designed to protect either the contracting carrier from its own folly or a contracting carrier's competitors from that carrier's competition. Under either case, the rule is alleged to reflect "administrative paternalism." Moreover, to the extent the Proposed Rule is intended to limit competition and stabilize rates, it allegedly could be considered as a form of price support for ocean carriers. CMA notes that section 4(a)(7) of the 1984 Act [12] gives conferences the ability to prohibit or regulate their members' use of service contracts to limit competition, and CMA contends that the Commission should not assume this role.

CMA notes the Commission's statement that, as a practical matter, a carrier signatory to a service contract could meet the rate of a competitor by simply adjusting its own *tariff rates*. It argues, however, that such an approach would make service contracts more restrictive than general tariffs and would discourage the use of service contracts.

The American Paper Institute, Inc. ("API") points out that the Transpacific Westbound Rate Agreement ("TWRA") no longer enters into any service contracts and suggests that this alone is reason enough to deny the Petition. It also questions how MFS clauses can be upsetting any balance between shipper and carrier interests. API claims that carrier opposition to the concept of service contracts was rejected by Congress in enacting the 1984 Act and submits that the Commission should not now "second-guess" Congress.

API further questions the Commission's reliance on a Report of

duration; (6) Service commitments; and (7) The liquidated damages for nonperformance, if any.

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. 46 U.S.C. app. 1707(c).

[12] Section 4 states, in part: (a) Ocean Common Carriers—This Act applies to agreements by or among ocean common carriers to—* * * (7) regulate or prohibit their use of service contracts. 46 U.S.C. app. 1703(a)(7).

the House Committee on Merchant Marine and Fisheries ("House Report") [13] for the proposition that Congress intended that the Commission take an active role in regulating service contracts. API suggests, rather, that the controlling legislative history is the Conference Report [14] and then the Senate Report. It reads the Conference Report as indicating that service contracts can be employed in a discriminatory fashion and are not, therefore, constrained in any way by common carriage concepts.

API takes issue with the Commission's interpretation of the statement—"to the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice." Senate Report at 32. This language is allegedly not meant "* * * to tie the referenced tariff to any particular carrier or conference's rate, but rather to emphasize that incorporation by reference will be allowed for a 'general public tariff.'" After citing additional language in the Senate Report, API concludes that the concern of Congress was not *whose* rates are referenced, but rather that publicly available rates be referenced.

API furthers suggests that the Commissions reliance on precedent under section 18(b)(3) of the Shipping Act, 1916, 46 U.S.C. 817(b)(3) (repealed 1984), is inapposite to service contracts, which are entirely new under the 1984 Act and are intended to provide certain preferences.

Du Pont claims that the definition set forth in proposed § 581.1(f) is not a "most-favored-shipper" clause, but rather a "meeting competition" clause. It submits that valid "meeting competition" clauses do not result in a lack of mutuality of consideration. To the contrary, Du Pont suggests that the common law recognizes contracts that provide relief from adverse price consequences based on changing market conditions as valid. Du Pont also questions ICCO's references to a lack of balance or the overwhelming market power of shippers over carriers, especially in light of the fact that the TWRA has *no* service contracts, with or without "meeting competition" clauses.

Du Pont further proposes that the Proposed Rule be modified so that shippers could use only written offers from comparable carriers that are firmly committed, in writing, to provide the service, either under a tariff or under a service contract, if the contract carrier elects not to continue to carry the cargo. Moreover, Du Pont proposes to preserve the statutory rights of similarly situated shippers by treating a carrier's decision to meet competition as a new, limited service contract, thereby affording a 30-day period for similarly situated shippers to exercise their "me-too" rights.

Subaru fully supports the Proposed Rule as a fair and equitable solution to the concerns raised by ICCO's Petition. It believes that if carriers are free to adjust rates in a service contract upward (by reference to a general rate increase), they should also be free to allow reductions, when market conditions dictate. In addition, Subaru notes that the proper time for a carrier to address an MFS clause is at the time the contract is negotiated, because such a provision need not be included if a carrier does not desire it.

The National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") likewise supports the Proposed Rule. It notes that, historically, after a shipper executes a service contract, conferences have adjusted rates downward to a point where a non-signatory shipper has a lower rate than a competing signatory. In addition, NCBFAA asserts that after a shipper tenders cargo for a period of time and establishes its ability to generate a certain volume of cargo, carriers, may approach the shipper and seek to deal directly with it by offering a lower than contract rate. The Proposed Rule is seen as preventing this conduct.

C. Other Commenters

Senator Breaux advises that service contracts were not intended to replace the system of common carriage in ocean transportation. He states that they were intended to provide greater stability to ocean freight rates and to enable both shippers and carriers to make mutual commitments which would add greater predictability to rates, volume and service. Senator Breaux further states that the essence of service contracts is the long nature of these commitments as opposed to the unpredictable tendering of cargo under tariff rates that may fluctuate.

Congressman Jones expresses support for the standards in the Proposed Rule that define, by exclusion, what may be considered an acceptable service contract. He also notes the importance of the Commission's reiteration of its policy to require meaningful rate and service commitments for shippers and meaningful service commitments for carriers. Congressman Jones views the Proposed Rule as reducing the burden on the Commission if MSF clauses were allowed and numerous contract amendments were filed with it.

Discussion

MFS clauses are provisions in service contracts that permit the contract rate to vary based on some external activity or event. There are essentially three different types of MFS clauses. The first allows a service contract to meet or adopt any rate offered by the contracting carrier or conference in its tariffs or service contracts. The second allows the contract to meet the rates of other carriers or conferences, whether in tariffs or service contracts. The last category permits changes to the contract rate based on unpublished offers of other carriers.

ICCO originally petitioned the Commission for a rule that would prohibit all three forms of MFS clauses. ICCO also requested a rule establishing a minimally acceptable level for liquidated damages provisions in service contracts for a shipper breach of its volume commitment.

The Proposed Rule would have allowed a carrier's service contract rate to be adjusted based on its own tariff rates or service contract rates. Reference to other carriers' rates or offers would have been prohibited. However, the Commission also suggested that a basis might exist to distinguish and permit MFS clauses referencing other carriers' rates. In addition, the Commission declined to issue a rule addressing the acceptable level of liquidated damages, but instead indicated that it would deal with that issue on a case-by-case basis.

After consideration of all the comments to the Proposed Rule, the Commission has determined to prohibit only those MFS clauses that allow a service contract rate to meet unpublished offers of carriers or conferences. In addition, the Commission notes that the issue of *de minimis* liquidated damages was outside the scope of the Proposed Rule. Nonetheless, because this issue was reargued by some commenters, the Commission will take this opportunity to reaffirm its earlier decision. The reasons for these determinations follow, with the latter subject treated first.

Liquidated damages are sums a party to a contract agrees to pay to the other party in the event a promise is breached, and are good faith efforts to estimate the actual damages which might ensue, taking into account the difficulties in proving actual damages. *See Black's Law Dictionary* 353 (5th ed. 1979). The appropriateness of any given liquidated damages provision is generally judged

[13] H.R. Rep. No. 53, 98th Cong., 1st Sess. (1983).

[14] H.R. Conf. Rep. No. 600, 98th Cong., 2nd Sess. (1984) ("Conference Report").

on its own unique circumstances. In the area of service contracts for ocean transportation, liquidated damages are most often included to address the situation of a shipper failing to meet its volume commitment. However, given the shipper, carrier, commodity, and trade characteristics that influence the determination of liquidated damages, it may be particularly difficult to quantify in a universally applicable rule, what might be an acceptable level of liquidated damages.

The Commission has never stated, however, that it lacks authority to issue regulations concerning *de minimis* liquidated damages. In fact, in the Supplemental Information to the Proposed Rule, the Commission stated that, although it

> * * * lacks the authority to directly regulate the use of liquidated damages provisions [this] does not necessarily mean that the Commission is without authority to preclude service contract liquidated damages provisions which may permit evasion of the otherwise applicable tariff rate contrary to the 1984 Act and the policies underlying it, regardless of whether both parties to the contract willingly or unwillingly agree to those provisions.

Proposed Rule at 28, 29. In this regard, the Commission noted that it would be extremely difficult to devise "an efficient and appropriate regulatory requirement" and that it would only consider such a course of action if there were a showing that "the use of *de minimis* liquidated damages clauses is widespread and presents a serious problem that threatens the viability of the overall legislative scheme of the 1984 Act."

Although the Commission recognized that there is a potential for illusory contracting through the use of *de minimis* liquidated damages clauses and that such contracting may on occasion have occurred, it did not find such contracting to have been shown to be of sufficient magnitude to warrant the significant restrictions on service contracting that effective regulation would entail. Proposed Rule at 30. In this connection, the Commission also noted a random survey of service contracts by its staff that indicted that only 6% of the contracts reviewed had liquidated damages provisions at less than a level that might be considered clearly *de minimis*. The Commission nevertheless advised that it would closely scrutinize filed service contracts and reject any with potentially low levels of liquidated damages.[15]

No new facts or arguments have been presented that persuade the Commission to alter its earlier determination. Moreover, more recent Commission staff surveys reveal only about seven to nine percent of the service contracts reviewed having provisions for deadfreight at a level that might be considered clearly *de minimis*. The Commission therefore will treat such matters on a case-by-case basis. The Commission intends to be particularly vigilant in this regard, and intends to require parties to any service contract containing suspect levels of liquidated damages to justify their provisions. It is the Commission's belief that under certain circumstances liquidated damages of an extremely minimal amount could violate section 10(a)(1) of the 1984 Act and may also indicate a failure of consideration on the part of the shipper, calling into question whether the arrangement is indeed a "contract."

ICCO's Petition indicated that MFS clauses may, in certain instances, be triggered not only by some rate offer contained in a tariff or service contract, but also by other means, including telephone quotes. The Commission concluded, in issuing the Proposed Rule, that this type of MFS clause appeared to be contrary to section 8(c) of the 1984 Act. The Commission explained that tying a service contract rate to an unpublished, nonbinding rate "offer," that cannot be readily ascertained by interested third parties, did not appear to provide the "meaningful commercial disclosure" contemplated by Congress. Proposed Rule at 22 and 27.

The only two commenters that directly addressed this type of MFS clause represented shipper interests. Notwithstanding their predeliction in favor of MFS clauses generally, these commenters concede that clauses tied to unpublished offers might be legally prohibited by the Commission. Thus, API states that, to the extent an MFS clause references an unpublished and unknown rate which is not thereafter filed with the Commission, prohibition would constitute a "viable enforcement action designed to provide meaningful commercial disclosure." Likewise, AISA indicates that it could support a regulation prohibiting reference to unpublished offers as being within the Commission's jurisdiction to require rate certainty.

The Commission concludes that service contract provisions that allow a contract rate to match a vague, unwritten and unpublished offer of some other carrier are unlawful and should be, therefore, prohibited. These types of provisions do not provide *any* commercial disclosure to other interested parties, let alone the meaningful commercial disclosure required by section 8(c) of the Act. Accordingly, the Proposed Rule has been modified to clarify that this type of MFS clause will no longer be countenanced. Specific language will be added to 46 CFR 581.5(a)(3)(iii) to indicate that the "contract rate" essential term may not be changed based on rate offers of other carriers not published in a tariff or service contract.[16]

As for the remaining two types of MFS clauses, there is little or no practical difference between them. A service contract that references a carrier's own tariff or service contracts and a contract that references rates contained in other carriers' tarriffs or service contracts both operate in a similar manner. The only question is whether the kinds of materials to which they refer (*i.e.*, one's own rates versus the rates of others) have been somehow distinguished by statute or by Congressional intent.

Upon review of the comments and further consideration of the relevant language, the Commission does not believe that the Senate Report can serve as a sufficient basis to distinguish between these two types of MFS clauses.[17] The language in this Report discussing incorporation by reference to a carrier's general public tariff makes reference only to a carrier's additional "charges" or "allowances" and not the base rate for the commodity covered by the contract. Therefore, because the Senate Report does not distinguish

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[15] As the Commission noted: * * * it is the stated policy of the Commission to require meaningful rate and volume commitments on the part of the shipper and meaningful service commitments on the part of the carrier in all service contracts entered into under the authority of section 8(c) of the 1984 Act. The Commission will scrutinize contracts carefully at the time of filing to ensure that they contain such commitments, pursuant to the requirements of 46 CFR 581.1(n). Failure to comply with the requirements of 46 CFR 581.1(n), as herein interpreted, will result in the rejection of the contract pursuant to 46 CFR 581.8 or other appropriate Commission action. Proposed Rule at 27.

[16] The Final Rule thus amends existing paragraph (a)(3) of § 581.5, rather than adding several new paragraphs to Part 581, as had originally been proposed.

[17] The pertinent section of the Senate Report states: The "line-haul rate," referred to in paragraph (4) includes all compensation to be paid and must also be disclosed. Many service contracts may provide for charges or allowances for transporting and handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. To the extent any contract charge or allowance is the same as that in the carrier's or conference's general public tariff, incorporation by reference will suffice. Senate Report at 31, 32.

between MFS clauses referencing a carrier's own rates and those referencing other carriers' rates, both types of clauses must be assessed together against other possible restrictions contained in the 1984 Act.

ICCO has argued that service contracts containing MFS clauses do not contain "certain" rates for purposes of section 3(21) of the 1984 Act. The Commission disagrees. As we noted in the Proposed Rule, a contract must be drafted so as to permit a person to ascertain the agreed upon rate from the face of the document or a specified rate schedule. The initial rate to be charged under a contract containing an MFS clause is a specific, numerical rate and is, therefore, "certain" for section 3(21) purposes. Moreover, to the extent that that rate is subsequently adjusted based upon circumstances specifically set forth in the MFS clause, that "adjusted" rate is capable of being ascertained from objective data, although published elsewhere. In fact, when such a contingency is invoked, the Commission's rules already require that this fact must be brought to the Commission's attention. 46 CFR 581.3(a)(3)(viii) and 581.5(b)(1). At all times, the applicable rate under a contract with an MFS clause will be ascertainable and known to the Commission.

ICCO has also argued that MFS clauses that reference other carriers' rates violate section 10(b)(1) of the 1984 Act. The Commission again disagrees, after full consideration of all the comments and reexamination of the applicable statutory language. A carrier that adjusts a service contract rate in accordance with an MFS clause referencing other carriers' rates is charging a rate "shown in its service contract." Although the rate ultimately charged may be affected by another carrier's rates, the method of determining the service contract rate is stated in the contracting carrier's service contract. And, as indicated above, that rate is ascertainable from objective data. The Commission does not therefore believe that section 10(b)(1) can be used to distinguish between acceptable MFS clauses.

One further issue raised in the Supplemental Information to the Proposed Rule is whether MFS clauses are in any way inconsistent with the Commission's past policy and precedent which precluded a carrier's tariff from referencing rates published in any other carrier's tariff.[18] The Commission noted that this policy was designed to lessen the burden on shippers to refer to other carriers' tariffs to determine applicable freight rates. However, given the "greater commercial freedoms service contracts appear to have been intended to provide," the Commission specifically recognized that "a direct application of tariff case law and policy to service contracts may be inappropriate." Proposed Rule at 28. For the reasons stated below, the Commission finds the tariff, no-cross-referencing policy to be not directly applicable to service contracts.

In the process leading up to enactment of the 1984 Act, the issue of whether to require tariff filing at all was thoroughly debated. Ultimately, Congress decided to continue the system of tariff filing and with it the Commission's prior interpretation and rules. However, there is no clear indication that Congress at any time intended that the Commission's practices *vis-a-vis* service contracts were to track its existing tariff filing practices.[19]

Moreover, Congress specifically distinguished service contracts from rates in tariffs. The Conference Report notes that section 8(a) of the Act "* * * does not require service contracts to be filed in tariffs." Conference Report at 29. As a result, conferences are not required to permit their members a right of independent action on service contracts pursuant to section 5(b)(8). *Id.* Tariff rates are open to all and must be employed in a non-discriminatory manner. However, service contracts may favor certain shippers and are expressly exempted from certain statutory prohibitions against discrimination. *See e.g.* 46 U.S.C. app. 1709(b) (6) and (11).

Further support for not applying the tariff, "no cross-referencing" policy to service contracts can be drawn from the policy underlying the rule itself. As the Commission noted in the Supplementary Information, the reason the tariff policy was adopted was to lessen the burden on a shipper to ascertain the applicable rate. However, in the case of an MFS clause, as noted in shipper comments, it is the shipper who negotiates the clause and voluntarily assumes the burden of becoming aware of other rates that might trigger the clause.

Based on the foregoing, the Commission cannot find that MFS clauses that reference published rates of the same or other carriers are *per se* contrary to the Shipping Act of 1984 or otherwise warrant regulation. The Commission will not, therefore, adopt any rules that would prohibit such clauses. The Commission further concludes, however, that MFS clauses referencing unpublished offers are contrary to section 8(c) of the 1984 Act, and will modify its service contract regulations to preclude such provisions.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Rule will not have a significant economic impact on a substantial number of small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 581

Administrative practice and procedure, Contracts, Maritime carriers, Rates and fares.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984, Part 581, Title 46, Code of Federal Regulations, is amended as follows:

PART 581—[AMENDED]

1. The authority citation to Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, and 1718.

2. In § 581.5, paragraph (a)(3)(iii) is revised to read as follows:

§ 581.5 Content of essential terms; contingency clauses.

(a) * * *

(3) * * *

[18] Although the Commission raised the question of the applicability of tariff rules and precedent in the context of MFS clauses that reference other carriers' rates, several commenters have suggested that these arguments apply with equal force to MFS clauses that reference a carrier's own rates. The relevant tariff rules, 46 CFR 580.6(k)(2), 580.5(g), and 580.13(b), allegedly reflect a longstanding Commission policy of prohibiting a carrier from incorporating by reference *any* rates, even its own.

[19] There is language in the Senate Report to the effect that "* * * a service contract must be filed and is subject to the tariff filing requirements and common carrier obligations of the bill." Senate Report at 21. However, the "tariff filing requirement * * * of the bill" to which the Report refers appear to be any requirement that a statement of the essential terms of a service contract be "made available to the general public in tariff format." *See* section 8(c).

(iii) *The contract, rates or rate schedule(s)*, including any additional or other charges [*i.e.*, general rate increases, surcharges, terminal handling charges, etc.] that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges;

Provided, however, that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25608 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1718

Margin Stabilization Plans, Revenue and Expense Deferrals, and Refunds of Previously Recorded Revenues

AGENCY: Rural Electrification Administration (REA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration is proposing to develop a regulation that will set forth the procedures that borrowers must follow to gain REA approval of margin stabilization plans, revenue and expense deferrals, and refunds of previously recorded revenues. The intended effect of this proposed regulation will be to implement the provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, to allow such plans to comply with the Uniform System of Accounts Prescribed for Electric Borrowers of the Rural Electrification Administration.

DATE: Public comments must be received by REA no later than: December 7, 1988.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Borrower Accounting Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, DC, 20250. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address:

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Borrower Accounting Division, at the above address, telephone number (202) 382–9450.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions in the proposal. This proposed regulation will be codified as 7 CFR chapter XVII, REA Regulations, Part 1718, Uniform System of Accounts Prescribed for Electric Borrowers of the Rural Electrification Administration, at a later date. Until a final rule has been adopted, REA will consider requests for approval of margin stabilization plans, revenue and expense deferral plans, and refunds of previously recorded revenues on a case by case basis using the criteria set forth herein.

Discussion

Rapid increases in the consumption of electric energy in the 1960's forced electric utilities to consider their capabilities of providing adquate, dependable service in the 1980's and 1990's. As a result, many utilities entered into long-term construction projects to provide the generating facilities necessary to meet future energy needs. The dramatic increase in the cost of energy in the 1970's, however, resulted in conservation practices on the part of the consumers to such an extent that usage levels have never reached those previously estimated. This reduction in consumption, coupled with a sharp increase in construction costs, has forced the management of today's electric utility cooperatives to consider methods of accounting for income and expense items differently from those considered generally acceptable in other industries.

In 1982, the Financial Accounting Standards Board considered the accounting procedures used by rate-regulated enterprises and issued Statement of Financial Accounting Standard No. 71 (Statement No. 71), Accounting for the Effects of Certain Types of Regulation. The underlying assumption upon which Statement No. 71 was promulgated assumes that current period costs or revenues can be passed on to future consumers if they are included in the utility's rate base, an assurance that is not provided nonregulated industries.

When reviewing a deferral for approval by REA, we will consider deferral plans to fall into two categories:

1. Margin Stabilization Plans (including refunds of previously recorded revenues), and
2. Revenue or Expense Deferral Plans.

Under the provisions of a margin stabilization plan, the cooperative develops a targeted margin, often focusing on a targeted Times Interested Earned Ratio (TIER). All margins realized in excess of the targeted TIER are deducted from current income and recorded as a deferred credit. Conversely, any shortfall in targeted margins is added to current income and recorded as a deferred charge. Therefore, in every year of operation, the cooperative will report a TIER exactly equal to its targeted goal. The deferred credit/charge recorded in the current period is incorporated into the rate structure of future years as either a decrease or increase in rates.

Unlike a margin stabilization plan, the deferral of a specific current period cost usually focuses on an abnormally high expense item which, if taken into income in the current period, would result in a material decrease in current period margins. By building the cost into the rate structure of future periods, recovery is assured without a dramatic impact on current year's margins.

Similarly, if a utility anticipates the current recovery of a material future cost, it may incorporate a specific rate increase in the current period, and defer the recognition of that specific portion of revenue until future periods when the cost is incurred. For example, a cooperative may anticipate a marked increase in its purchased power expense because of a new power plant coming on line. The cooperative may opt to reduce the future rate shock associated with this cost by gradually raising rates and deferring the income until such time as the increase in power cost occurs.

All margin stabilization and revenue or expense deferral plans must receive REA approval prior to implementation. The plan is considered to be specific to the requesting entity and does not, therefore, require similar accounting treatment between generation and transmission borrowers and their distribution cooperatives nor does it imply that a similar plan may be adopted by cooperatives without expressed written consent by REA. To be considered for approval, the following information must be submitted to REA for review:

1. A detailed description of the plan and the specific accounting journal entries therefor. For a margin stabilization plan, the description must include the targeted margin and the method and the specific future periods in which the margin excess or shortfall will be returned or recovered. For an expense deferral plan, the description must include the nature of the expense item and the specific time period for rate recovery. For a revenue deferral, the description must include the specific mill/kWh to be deferred, the time period during which revenue will be deferred, and the timeframe over which the deferral will be amortized into income.

2. A private letter ruling from the Internal Revenue Service as to the effect of the deferral on the cooperative's tax exempt status (margin stabilization and revenue deferral plans only) and its continued operation as a "cooperative" under the tax law. If the cooperative elects to implement a plan prior to receiving the private letter ruling, REA will accept in lieu thereof, a resolution from the cooperative's board of directors stating that the cooperative is aware of the potential impact on its tax exempt and "cooperative" statuses and that it will accept the responsibility for the early implementation of this plan. Evidence of formal application to the IRS for the private letter ruling must be submitted with the board resolution.

3. A resolution from the cooperative's board of directors stating that the cash equivalent of all margins or revenues deferred will be segregated in a special fund until such time as a like amount is subsequently amortized into revenue (margin stabilization and revenue deferral plans only).

4. A statement from the cooperative's independent certified public accountant as to the plan's compliance with generally accepted accounting principles.

5. Approval from the state regulatory commission in those states in which the Commission has jurisdiction over the cooperative's rate-making activities.

REA will, within 60 days of final receipt of all items detailed above, notify the borrower of its approval or the items which must be revised to gain REA approval. Individual plans previously approved by REA must be resubmitted with the above information.

List of Subjects in 7 CFR Part 1718

Accounting.

Dated: November 1, 1988.

Jack Van Mark,

Acting Administrator, REA.

[FR Doc. 88-25715 Filed 11-4-88; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Filed No. 881 0120]

Sun Co., Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Radnor, Pa. corporation to divest terminals and related assets and operations of Atlantic Petroleum Corporation (Atlantic) that are located in certain parts of NY and PA and would also require respondent to obtain FTC approval before making any acquisition of any light products terminals or light products pipelines in certain parts of NY or PA. Under a "hold-separate agreement", respondent would also be required to run Atlantic as an independent company until the FTC approves the divestiture.

DATE: Comments must be received on or before January 6, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Gasoline, Petroleum products, Trade practices.

Agreement Containing Consent Order

In the Matter of Sun Company, Inc., a corporation, File No. 881-0120.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of shares of Common Stock of Atlantic Petroleum Maatschapij, B.V., ("Atlantic") by Sun Company, Inc. ("Sun"), and Sun having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Sun with violations of the Clayton Act and Federal Trade Commission Act; and it now appears that Sun is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between Sun, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Sun is a corporation organized under the laws of Pennsylvania with its executive offices 100 Matsonford Road in Radnor, Pennsylvania 19087. Atlantic is a Netherlands corporation which owns all the outstanding shares of Atlantic Petroleum Corporation, a corporation organized under the laws of Delaware with its executive offices at 1016 West 9th Avenue, King of Prussia, Pennsylvania 19398.

2. Sun admits all jurisdictional facts set forth in the attached draft of complaint.

3. Sun waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Sun, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute

an admission by Sun that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Sun, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Sun's address as stated in this agreement shall constitute service. Sun waives any right it may have to any other manner of service. The draft complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Sun has read the draft of complaint and order contemplated hereby. Sun understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Sun further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order (including the Agreement to Hold Separate, annexed to and made a part hereof), the following definitions shall apply:

(a) "Acquisition" means Sun's acquisition of shares of the common stock of Atlantic Petroleum Maatschappij, B.V.

(b) "Light products pipeline" means any pipeline or segment of a pipeline system that is used or that at any time during the two preceding years has been used for transportation of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(c) "Schedule A Properties" means the assets and businesses listed in Schedule A of this order.

(d) "Sun" means Sun Company, Inc., its predecesors, subsidiaries, divisions, groups and affiliates controlled by Sun and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(e) "Atlantic" means Atlantic Petroleum Maatschappij, B.V. as it was constituted prior to the acquisition, its predecesors, subsidiaries, divisions, groups and affiliates controlled by Atlantic and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(f) "Light products terminal" means a facility having the capacity to store ten thousand (10,000) barrels or more that is used or that at any time during the two preceeding years has been used for receiving, storage, and truck distribution of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(g) "Retail Gasoline Properties" means service stations, "convenience stores," and other real estate, whether owned in fee or leased, from which gasoline is sold to the public.

II

It is ordered that:

(A) Sun shall devest, absolutely and in good faith, within six months of the date this order becomes final, the Schedule A Properties, as well as any additional assets and businesses relating to petroleum transportation and marketing that (i) Sun may at its discretion include as a part of the assets to be divested and are acceptable to the acquiring entity, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the busineses in which the Properties are presently employed.

(B) Sun shall provide prospective acquirers of Schedule A Properties petroleum product exchanges if necessary to insure divestiture of the Properties as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto and made part hereof as Appendix I, shall continue in effect until such time as the Commission has approved Sun's divestiture of the Schedule A Properties or until such other time as the Agreement to Hold Separate provides, and Sun shall comply with all terms of said Agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purposes of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) Sun shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Schedule A Properties.

III

It is further ordered that, within sixty (60) days after the date of service of this order, and every sixty (60) days thereafter until Sun has fully complied with the provisions of paragraph II of this order, Sun shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Sun shall include in compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations for the divestiture of Properties specified in paragraph II of this order, including the identity of all parties contacted. Sun also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV

It is further ordered that, for a period commencing on the date of service of this Order and continuing for ten (10) years from and after the date of service of this Order, Sun shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in

(1) The ownership or operation of light products terminals in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York); or

(2) The ownership or operation of any light products pipeline in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York), excluding any pipeline or pipeline segment entirely located within a circular area with radius of fifty (50) miles centered on the Sun refinery at Marcus Hook, Pennsylvania and also excluding any light products pipeline assets purchased for less than two million dollars ($2,000,000).

provided, however, that these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which sun is a participant on the date of service of the order.

V

One year from the date of this Order and annually thereafter for nine years, Sun shall file with the Commission a verified written report of its compliance with paragraph IV.

VI

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative of the Commission:

(1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sun relating to any matters contained in this order; and

(2) Upon five (5) days' notice to Sun and without restraint or interefence from it, to interview officers or employees of Sun who may have counsel present regarding such matters.

VII

It is further ordered that Sun notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change that may affect compliance obligations arising out of the order.

Schedule A

Assets to be divested by Sun, as provided above, are the following:

1. All Atlantic light products terminals located in Broome County, New York (at 440 Prentice Road, Vestal, New York 13850, near the city of Binghamton) and in Lycoming County, Pennsylvania (at RD 4 South Williamsport, Pennsylvania 17701), including all associated on-site facilities and petroleum products inventories.

2. All retail gasoline properties owned by Atlantic at the following locations:

522 Hooper Road	Endwell, NY 13760
61 Glenwood Avenue	Binghamton, NY
3808 Vestal Parkway	Vestal, NY
2 Castle Creek Road	Binghamton, NY 13901
2680 Main Street	Whitney Point, NY 13862
1153 Vestal Avenue S Penn.	Binghamton, NY 13903
236–240 Conklin Avenue.	Binghamton, NY 13903
1010 Union Maine Highway.	Endicott, NY 13760
500 Vestal Avenue	Endicott, NY 13760
341–343 Fron Street	Binghamton, NY 13905
110 N. Main Street	Jersey Shore, PA 17740
241–243 Broad Street	Montoursville, PA 17754
261 Washington Blvd	Williamsport, PA 17701
507 Hepburn Street	Williamsport, PA 17701
857 W. Third	Williamsport, PA

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement"), by and between Sun Company, Inc. ("Sun"), a Pennsylvania corporation, with executive offices at 100 Matsonford Road, Radnor, Pennsylvania 19087, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.*, (collectively, "the Parties").

Premises

Whereas, on July 4, 1988, Sun and Atlantic Petroleum Corporation, N.V. and John C.M.A.M. Deuss entered into a stock purchase agreement, pursuant to which Sun agreed to purchase all issued and outstanding shares of capital stock of Atlantic Petroleum Maatschappij, B.V., which owns all the outstanding shares of Atlantic Refining and Marketing Corporation ("Atlantic"); and

Whereas, the Commission is now investigating the transaction contemplated by the stock purchase agreement (the "Acquisition") to determine if the acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of Atlantic's refining, transportation and marketing assets and business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the Consent Order (the "Schedule A Properties") and the Commission's right to seek to restore Atlantic as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve Atlantic as a viable petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the acquisition and to preserve Atlantic as a viable petroleum company in the event that divestiture is not achieved; and

Whereas, Sun's entering into this Agreement shall in no way be construed as an admission by Sun that the acquisition is illegal; and

Whereas, Sun understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Sun with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which is it annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to the Agreement, as follows:

1. Sun agrees to execute and be bound by the attached Consent Order.

2. Sun agrees that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the Federal Register of the Consent Order finally accepts such order, until all of the divestitures required by Schedule A of the Consent Order are approved by the Commission, Sun will hold all of Atlantic's refining, transportation, and marketing assets and business operations, separate and apart on the following terms and conditions:

a. All of Atlantic's refining, transportation, and marketing assets and businesses shall be operated independently of Sun;

b. Sun shall not exercise direction or control over, or influence directly or indirectly, any of Atlantic's refining, transportation, and marketing assets and businesses; provided, however, that Sun may exercise only such direction and control over Atlantic as is necessary to assure compliance with this Agreement.

c. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating an agreement to dispose of assets, Sun shall not receive or have access to, or the use of, any "material confidential information" relating to Atlantic's refining, transportation and marketing assets and businesses not in the public domain, except as such information would be available to Sun in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Sun from sources other than Atlantic, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

d. Sun shall not change the composition of the management of Atlantic's refining, transportation and marketing assets and businesss except as provided in subparagraph (e) herein and except that the current Atlantic directors, serving on the "New Board" (as defined in subparagraph (g) shall have the power to remove employees for cause; Sun shall maintain the viability and marketability of Atlantic's refining, transportation and marketing assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in normal course of business).

e. In the event that employees of Atlantic leave or resign from Atlantic prior to the expiration of this Agreement, and such vacancies are required to be filled in order to ensure the viability of Atlantic's operations and business, Sun may fill such vacancies, if any, with Sun employees, on the condition that the employees so appointed shall comply with all terms and conditions of this Agreement and shall enter a confidentiality agreement prohibiting disclosure of confidential information.

f. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 2 (a) through (e) hereof, shall be subject to a majority vote of the New Board (as defined in subparagraph (g)).

g. Sun may adopt new Articles of Incorporation and Bylaws, provided that they are not inconsistent with other provisions of this Agreement, and may elect a new three person board of directors of Atlantic ("New Board") once it is a majority shareholder of Atlantic. Sun may elect the directors to the Board; provided, however, that such Board shall consist of at least two current Atlantic employees and no more than one Sun director, officer, employee, or agent. Except as permitted by this Agreement, the director of Atlantic who is also a Sun director, officer, employee or agent, shall not receive in his or her capacity as director of Atlantic material confidential information relating to Atlantic's refining, transportation and marketing assets and businesses and shall not disclose any such information received under this agreement to Sun or use it to obtain any advantage for Sun. Said director of Atlantic who is also a Sun director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of confidential information. Such director shall participate in matters that come before the New Board only for the limited purpose of considering a capital investment or oher transactions exceeding $5,000,000 and carrying out Sun's and Atlantic's responsibility to assure that Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets to achieve the remedial purposes of the Consent Order. Except as permitted by this Agreement, such Director shall not paricipate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Sun and Atlantic were separate and independent entities. Meetings of the Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

h. Nothing herein shall prevent the New Board from negotiating or entering into agreements to dispose of Atlantic's assets, provided that any such agreements with respect to refining, transportation and marketing related assets and businesses are conditioned on and not consummated prior to final approval of the Consent Order by the Commission.

i. Nothing contained in this Agreement shall preclude a loan by Sun to Atlantic at closing in an amount sufficient to retire existing bank debt owed by Atlantic. Such loan shall be unsecured and bear interest at prevailing market rates payable to Sun and falling due fourteen (14) days after any denial of final approval of this Consent Order by the Commission.

j. A majority of the New Board may declare a dividend and payment not greater than the amount paid in the same quarter in 1987. Except for such divided payment, all earnings and profits of Atlantic shall be retained separately in Atlantic. Sun shall have the right to borrow monies from Atlantic upon approval by the majority of the New Board on the same terms and conditions described in paragraph (i); provided, however, that Sun shall not borrow funds if the result would be to impair Atlantic's ability to operate its refining, transportation and marketing assets and businesses at its 1987 levels of expenditure on an annualized basis.

k. Whereas Atlantic's refinery has previously been supplied with crude oil by relating companies, and whereas Atlantic's crude oil supply needs to be maintained in order to ensure the viability of Atlantic's operations and businesses, Sun may enter into an agreement to supply crude oil to Atlantic, provided that such agreement shall be negotiated by Sun and the New Board on an arm length basis and that the terms of such agreement shall provide that the purchases be based on the then current fair market value for crude oil.

l. Should the Federal Trade Commission seek in any proceeding to compel Sun to divest itself of the shares of Atlantic Petroleum Maatschappij, B.V. stock it shall acquire, or to compel Sun to divest any refining, transportation and marketing assets or

businesses that it may hold, or to seek any other injunctive or equitable relief, Sun shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Atlantic Petroleum Maatschappij, B.V. stock to be acquired. Sun also waives all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Sun and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Sun relating to compliance with this Agreement;

b. Upon five (5) days notice to Sun, and without restraint or interference from it, to interview officers or employees of Sun, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal proceedings to which the Commission is a party, or for the purpose of securing compliance with the Consent Order, or as otherwise required by law.

If, at any time, information or documents are furnished by Sun and Sun identifies such documents as "Confidential," then the Commission shall provide to Sun ten (10) days notice or, if ten (10) days is not possible, as many days notice as possible prior to duvulging such material in any legal proceeding to which that entity is not a party.

4. This agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from Sun Company, Inc. ("Sun"), an agreement containing consent order in settlement of a Complaint challenging a portion of the assets obtained through Sun's acquisition of the voting stock of the Dutch parent of Atlantic Petroleum Corporation ("Atlantic"). Specifically, the Compliant challenges Sun's acquisition of light petroleum products terminals in Williamsport, PA and Binghamton, NY.[1] The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Commission's investigation of this matter concerned Sun's ownership, after purchase of the stock, of the Atlantic refinery in Philadelphia, about 900 miles of light products pipeline in the states of New York and Pennsylvania, 30 distribution terminals in the states of New York and Pennsylvania, and approximately 571 owned retail service stations and convenience stores in New York and Pennsylvania. Sun owns similar assets in these markets.

The Commission has reason to believe that the acquisition of Atlantic terminals in Williamsport, PA and Binghamton, NY is in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges anticompetitive effects in the wholesale distribution and marketing of light petroleum products from terminals in Williamsport, PA and Binghamton, NY.

The proposed Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the Complaint. The Order contains provisions requiring the divestiture of Atlantic terminals and related assets and operations in Williamsport, PA and Binghamton, NY.

Under the terms of the Order, Sun must divest all Atlantic light products terminals located in Broome County, New York and Lycoming County, Pennsylvania, including all associated on-site facilities and petroleum products inventories. In addition, Sun must divest all retail gasoline properties owned by Atlantic and supplied predominantly from the above terminals.[2]

The Order also requires that, until all divestitures required by the Order are approved by the Commission, Sun must hold all of Atlantic's petroleum assets and operations separate and apart from its own operations and assets.

For a period of ten years from its effective date, the proposed Order prohibits Sun from acquiring without prior Commission approval any light products terminals in the states of New York or Pennsylvania. Sun must also obtain prior Commission approval for its acquisition of any light products pipelines assets and operations in the state of Pennsylvania or New York, the acquisition price of which is over $2,000,000 or not within a 50 mile radius of the Sun Marcus Hook refinery.

It is anticipated that the Order would resolve the violations alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the Agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

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BILLING CODE 6750-01-M

[1] The Complaint charges that the acquisition of terminals in Williamsport, PA and Binghamton, NY violates section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 and that the acquisition of these assets violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Atlantic was not named as a respondent in the Commission's Complaint.

[2] A list of retail gasoline properties is included in Schedule A which is appended to the Agreement Containing Consent Order.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1031 and 1032

Commission Participation and Commission Employee Involvement in Voluntary Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulations governing the Commission's participation in voluntary standards activities. The revised regulations reflect the policies set forth by Congress in the Consumer Product Safety Amendments of 1981, Pub. L. 97-35, and make several changes in the agency's policies on employee participation in voluntary standards development activities. Also, the proposed revised regulations combine existing Part 1031, Employee Membership and Participation in Voluntary Standards Organizations, and Part 1032, Commission Involvement in Voluntary Standards Activities, into a

revised Part 1031, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities.

DATES: Comments must be submitted on or before December 7, 1988.

ADDRESSES: Comments may be mailed to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone: (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: Colin Church, Voluntary Standards Coordinator, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6550.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Consumer Product Safety Act in 1972, codified at 15 U.S.C. 2051, et. seq., to protect consumers against unreasonable risks of injury associated with consumer products. In furtherance of that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self-regulation, 15 U.S.C. 2056(a)(1)(A). The Commission was also given the authority to require manufacturers to provide consumer label warnings or instructions about their products, 15 U.S.C. 2056(a)(2), and to promulgate standards for products falling under the purview of the Refrigerator Safety Act, 15 U.S.C. 1211–1214, the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471–1476, the Flammable Fabrics Act, 15 U.S.C. 1191–1204, and the Federal Hazardous Substances Act, 15 U.S.C. 1261–1274. As originally enacted, neither the Consumer Product Safety Act nor the other statutes administered by the Commission contained any language referring to voluntary standards.

In 1978, the Commission issued regulations describing the extent and form of Commission involvement in the development of voluntary standards, 43 FR 19216, 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. In the Background section, the Commission acknowledged the contribution which voluntary standards had made to reducing hazards associated with consumer products, and stated that it supported an effective voluntary standards program. Nonetheless, the Commission asserted that "While there might be circumstances in which a particular voluntary standard can substitute for a mandatory standard, the Commission generally views voluntary standards as complementary to and not a substitute for mandatory standards". It stated, also, its belief that a proper combination of voluntary and mandatory standards can have a higher "payoff" in increased product safety than either mandatory or voluntary activities alone could have.

In 1981, Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to mandate that the Commission give preference to voluntary standards over promulgating mandatory standards, if it determines that a voluntary standard will eliminate or adequately reduce an injury risk, and that there will be a likelihood of substantial compliance with the standard. 15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2). The amendments also require the Commission to provide administrative and technical assistance to organizations engaged in voluntary standards development. 15 U.S.C. 2054(a) (3) and (4).

Thereafter, the Commission conducted its activities in accordance with the policies of the 1981 Amendments by deferring to voluntary standards in those cases where a voluntary standard would adequately reduce an unreasonable risk of injury and there was a reasonable likelihood of substantial compliance with the standard. However, the Commission's plicy statement in 16 CFR Part 1032 is inconsistent with the policy stated in the 1981 Amendments. The purpose of this proposed revision is to conform the Commission's policy statement with the 1981 Amendments.

The proposed Part 1031 also incorporates, with changes, the provisions of current 16 CFR Part 1031, the Commission's regulations governing organizations, which were initially promulgated on June 20, 1975. 40 FR 26023. The Part specifies which Commission officers and employees can be members of voluntary standards bodies or can participate in voluntary standards development activities. Each substantive change is explained below.

Explanation of Changes and Additions in Proposed Part 1031

Subpart A, General Policies, is a revision of current 16 CFR Part 1032, Commission Involvement in Voluntary Standards Activities. The proposed Subpart A is substantially the same as existing Part 1032, except as described below.

Section 1031.1(b) has been added to define "voluntary standards bodies" and "voluntary standards development bodies". The definitions are similar to those in OMB Circular A–119 and reflect the language Congress employed in Section 5(a) (3) and (4) of the Consumer Product Safety Act as to which organizations the Commission should assist in voluntary standards activities, i.e., "public and private organizations or groups of manufacturers." The definitions are stated in broad terms so as to encompass any organization that has the capability of developing a voluntary standard.

Section 1031.2, Background, a complete revision of current § 1032.1, explains the policy of the Commission regarding voluntary standards. Section 1031.2(b) explains the statutory requirements of the 1981 Amendments regarding voluntary standards. Section 1031.2(c) describes the policies set forth in Office of Management and Budget Circular No. A–119 pertaining to federal participation in the development and use of voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies' missions, authorities, priorities, and budget resources.

Section 1031.3, Consumer Product Safety Act Amendments, incorporates the text of several sections from the Act, as amended in 1981, which pertain to the Commission's participation in the development and use of voluntary standards. The provisions are provided in the text of the regulation for the reader's convenience.

Section 1031.4(a)(2) modifies current § 1032.6(a)(2), so that one of the criteria for the Commission's determination that a voluntary standard is adequate to eliminate or reduce a risk of injury associated with a consumer product is changed from the language that "there is a sufficiently high degree of conformance to the voluntary standard" to language "it is likely that there will be substantial compliance with the voluntary standard." The proposed new language reflects provisions in the 1981 Amendments that allow the Commission to defer to proposed voluntary standards under appropriate circumstances.

Section 1032.6(b) in the current regulations is deleted since it is inconsistent with the 1981 Amendments.

Section 1031.4(b) is a new provision that provides for the Commission to initiate a proceeding for the

development of a mandatory standard in the event it determines there is no voluntary standard that will eliminate or adequately reduce a risk of injury.

Section 1031.4(c) revises the language in current 16 CFR 1032.6(d), which requires the Commission to consider the provisions of a voluntary standard when it initiates a development proceeding under "Section 7 of the Consumer Product Safety Act." As originally enacted, section 7, referred to as the "offeror process", provided that the Commission could solicit "offers" from private sector organizations to develop a mandatory standard. However, section 7 was revised by the 1981 Amendments to abolish the "Offeror process"; thus, reference to that section is inappropriate. The proposed § 1031.4(c) references, instead, section 9 of the Consumer Product Safety Act, the current provision prescribing the process for issuing a mandatory consumer product safety rule.

Section 1031.5 sets forth the criteria for Commission participation in voluntary standards activities. It is the same criteria set forth in current 16 CFR 1032.5, except that two new criteria (paragraphs (a) and (b)) have been added to conform to criteria prescribed by the 1981 Amendments.

Section 1031.5(f) provides criteria superseding the criterion set forth in current 16 CFR 1032.5(e) for Commission consideration to determine whether to participate in the development of a voluntary standard. The current provision merely requires that the Commission consider the degree and ascertainability of industry conformance with a voluntary standard once it is issued. The proposed section requires the Commission to consider any reasonable industry arrangements for achieving substantial industry compliance with a voluntary standard once it is issued and the means of ascertaining such compliance based on overall market share of product production. The latter requirements reflects the Congressional direction that, in most instances, compliance should be measured in terms of complying consumer products rather than in terms of the number of complying industry members. See the Conference Report to accompany H.R. 3982, H.R. REP. No 97-208, 97th Cong., 1st Sess. 871 (1981).

Section 1031.6(c)(1) replaces and revises current 16 CFR 1032.(b)(2), which describes examples of Commission participation in voluntary standards activities, by adding language allowing the Commission to provide administrative assistance (e.g., travel costs, hosting meetings, and performing secretarial functions) in support of the development and implementation of voluntary standards. This provision is derived from Section 5 of the Consumer Product Safety Act, as amended in 1981.

Section 1031.6(d) is added to conform to the policy set forth in OMB Circular A-119 that, normally, agencies should not provide greater support to a voluntary standards activity than that of all the non-federal participants.

Section 1031.7(a)(7) replaces and revises 16 CFR 1032.4(b)(7) by adding a clause that indicates that the Commission's support of voluntary standards activities may include encouraging states and local governments to participate in government or industrial model code development activities so as to develop uniformity and to minimize conflicting state and local regulations, as provided by section 2(b)(3) of the Consumer Product Safety Act.

Section 1031.7(a)(8) provides a new example of the type of support the Commission may use in assisting voluntary standards development, i.e., monitoring the number and market share of products conforming to a voluntary safety standard. This will enable the Commission to ascertain industry compliance with a voluntary standard by market share.

Section 1031.7(a)(10) is a new provision. It acknowledges that one form of Commission support for voluntary standards development is providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this proposed regulation.

Sections 1031.7 (11) and (12) are new provisions. They indicate that the Commission may provide administrative and financial support to a voluntary standards development activity, as authorized by the 1981 Amendments.

Section 1031.8 is a new provision. It describes the functions of the Voluntary Standards Coordinator, a Commission employee responsible for coordinating agency participation in voluntary standards activities and managing the voluntary standards program.

Subpart B, Employee Involvement in Voluntary Standards Activities, supersedes 16 CFR Part 1031. The Proposed subpart has the same general effect as current Part 1031 except for the changes noted below.

Section 1031.9(c)(1) revises current § 1031.1(a) to state that the Commission's participation in voluntary standards programs is consistent with the federal policy set forth in OMB Circular No. A-119, as well as the Consumer Product Safety Act and other statutes administered by the Commission.

Section 1031.9(c)(4) is a new provision. It states that Commission employee participation in voluntary standards activities should take into account Commission resources and priorities. This provision conforms to language in the legislative history of the 1981 Amendments directing the Commission to consider its resources and priorities when determining what assistance it will provide to voluntary standards development. Conference Report to H.R. 3982, p. 884.

Section 1031.10 is a new section. It defines, for the purpose of Subpart B on employee involvement in voluntary standards activities, the terms membership, participation, monitoring, observation, and communication.

Section 1031.11(b) is a new provision which requires employees, who participate in the development of a voluntary standard and then later advise the Commission regarding that standard, to advise the Commission on the extent of their involvement. Also, the provision requires that evaluations and recommendations by such employees should strive to be as objective as possible and should be reviewed by higher level Commission officials prior to submission to the Commission.

Section 1031.12(a) lists those Commission officials who may not become members of a voluntary standards group because they have the responsibility for making final decisions, or objectively advising those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product. The list is the same as that in current § 1031.4, except that Program Managers in the Office of Program Management and Budget have been deleted because their work and recommendations are reviewed by supervisory officials before being given to the Commission. It has also been revised to reflect the Commission's functions regarding voluntary standards which emanate from the 1981 Amendments, i.e., to determine whether a voluntary standard will adequately address a problem involving an unreasonable risk. The predecessor provision referred to the Commission's functions relating to the "offeror process" which, as noted above, was abolished by the 1981 Amendments.

Section 1031.12(c) is a new provision. It requires employees who have obtained approval from the Executive Director to accept membership in a voluntary standards organization to so

inform the General Counsel and the Voluntary Standards Coordinator prior to their acceptance. This will allow the General Counsel and the Voluntary Standards Coordinator to be aware of the membership and an opportunity for them to provide any necessary guidance to the employee.

Section 1031.12(d) is a new provision that requires employees who seek membership in a voluntary standards organization in their individual capacity to seek approval from the Commission's Ethics Official in accordance with the Commission's Employee Standards of Conduct, 16 CFR Part 1030.

Section 1031.13(a), like its predecessor provision § 1031.4(d), provides that Commission employees, except for those who are specifically listed, may participate in or monitor voluntary standards development. The proposed provision differs from its predecessor in that it requires approval for employee participation or monitoring by the employee's supervisor and any other person required to do so by internal agency management procedures, whereas approval under the current unrevised regulations is required to be given by the Executive Director alone.

Section 1031.14, Observation criteria, supersedes current § 1031.5(d). The proposed provision requires employees who wish to attend voluntary standards meetings for the sole purpose of observation to obtain approval from their supervisor and any other person required to approve pursuant to internal agency management procedures. Under the current provision, approval must be provided by the Executive Director. The proposed provision also requires the employee to notify the Voluntary Standards Coordinator prior to observing a voluntary standard meeting.

Section 1031.15, Communication criteria, is a new provision providing the conditions for officials and employees to communicate with voluntary standards groups and representatives.

Commission officials and employees, who are authorized to be members of a voluntary standards group in their official capacity under § 1031.12(b), may communicate with a voluntary standard group or representative incidental to their membership. Likewise, those officials or employees, who are approved to participate in or monitor a voluntary standard development under § 1031.13 (a) and (b), may communicate with the voluntary standard body or its representatives as part of their approved participation in, or monitoring of, a standard under development.

Agency employees and officials who do not fall within either of the above categories, and are not prohibited from membership in a voluntary standards organization by virtue of § 1031.12 (a), may be authorized to communicate with a voluntary standards body or representative on substantive matters, sas defined in § 1031.15 (a) (1). Approval must be given by the person to whom an employee would apply to obtain approval for participation or monitoring pursuant to § 1031.13. Those same employees and officials may communicate with a voluntary standards group or representative on non-substantive matters within the scope of their duties without specific authorization.

Substantive matters are defined in § 1031.15 (a) (1) as those matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing a voluntary standard. Non-substantive matters would include those relating to scheduling meetings, obtaining status reports, and other administrative matters.

Section 1031.15(b) is a new provision. It requires that employees communicate with voluntary standards organizations in accordance with any internal agency procedures designed to assure staff review and consensus.

Section 1031.15 (c) is a new provision. It provides that the Commissioners can engage in written communications with voluntary standards bodies or representatives on voluntary standards matters providing they state that any substantive views expressed are only their individual views, and not necessarily those of the Commission acting in its collegial capacity. This provision changes the present regulation in § 1031.5—self-imposed by the Commission in 1978—that precludes the Commissioners for personally communicating with voluntary standards organizations concerning the development of voluntary standards. The new provision permits the Commissioners to activity encourage and support the development and use of voluntary standard to alleviate product hazards. The disclaimer is intended to preclude any misunderstanding on the part of a recipient of a letter as to whether the views expressed therein are those of the individual Commissioner or those of the Commission. Of course, the Commission may always communicate with parties on voluntary standards matters upon which they agree in their official collegial capacity.

Section 1031.15 (d) is a new provision. It requires that Commission officials and employees furnish a copy of each written communication of a substantive nature, and a report of each substantive oral conversation with voluntary standards groups or individuals, to the Voluntary Standards Coordinator. This requirement will enable the Coordinator to monitor all the voluntary standards activities the Commission and its employees are engaged in.

Certification of No Significant Economic Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601, et. seq.) requires that whenever a federal agency publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it must give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities"). The proposed regulations, if issued on a final basis, will be only for the information of the public and industry. They will not have the force of law, and will not impose any substantive obligation or duty on any person or firm, including any small firm. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, the Commission certifies that the proposed regulations, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

Environmental Considerations

The proposal published below will have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

16 CFR Part 1031

Business and industry, Conflict of interest, Consumer protection, Voluntary standards.

16 CFR Part 1032

Business and industry, Consumer protection, Voluntary standards.

Conclusion and Proposal

For the reasons set out in the preamble, Title 16, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 1032—[REMOVED]

1. Part 1032 is removed.

2. Part 1031 is revised to read as follows:

PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

Subpart A—General Policies

Subpart B—Employee Involvement

Authority: 15 U.S.C. 2051–2083, 15 U.S.C. 1261–1276, 15 U.S.C. 1191–1204

Subpart A—General Policies

§ 1031.1 Purpose and scope

(a) This Part 1031 sets forth the Consumer Product Safety Commission's guidelines and requirements on participating in the activities of voluntary standards bodies. Subpart A sets forth general policies on Commission participation, and Subpart B sets forth policies and guidelines on employee involvement in voluntary standards activities.

(b) For purposes of both Subpart A and Subpart B of this Part 1031, voluntary standards bodies are private sector domestic or multinational organizations or groups, or combinations thereof, such as, but not limited to, all non-profit organizations, industry associations, professional and technical societies, institutes, and test laboratories, that are involved in the planning, development, establishment, revision, review or coordination of voluntary standards. Voluntary standards development bodies are voluntary standards bodies, or their subgroups, that are devoted to developing or establishing voluntary standards.

§ 1031.2 Background.

(a) Congress enacted the Consumer Product Safety Act in 1972 to protect consumers against unreasonable risks of injury associated with consumer products. In order to achieve that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self regulation.

(b) In 1981, the Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to require the Commission to rely on voluntary standards rather than promulgate a mandatory standard when voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with the voluntary standards. (15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2)). The 1981 Amendments also require the Commission, after any notice or advance notice of proposed rulemaking, to provide technical and administrative assistance to persons or groups who propose to develop or modify an appropriate voluntary standard. (15 U.S.C. 2054(a)(3)). Additionally, the amendments encourage the Commission to provide technical and administrative assistance to groups developing product safety standards and test methods, taking into account Commission resources and priorities (15 U.S.C. 2054(a)(4)). Although the Commission is required to provide assistance to such groups, it may determine the level of assistance in accordance with the level of its own administrative and technical resources and in accordance with its assessment of the likelihood that the groups being assisted will successfully develop a voluntary standard that will preclude the need for a mandatory standard.

(c) In 1982, the Office of Management and Budget revised Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards. The Circular establishes the policy to be followed by executive agencies, including the Commission, in working with voluntary standards bodies and in adopting and using voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies' missions, authorities, priorities, and budget resources. The Circular recognizes, however, that voluntary standards activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Thus, agencies are urged to take full account of the impact on the economy, applicable Federal laws, polices and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, technological development, and conflicts of interest.

§ 1031.3 Consumer Product Safety Act amendments.

The Consumer Product Safety Act, as amended, contains several sections pertaining to the Commission's participation in the development and use of voluntary standards.

(a) Section 7(b) provides that the Commission shall rely on voluntary consumer product safety standards prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards. (15 U.S.C. 2056(b)).

(b) Section 5(a)(3) provides that the Commission shall, following publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice. (15 U.S.C. 2054(a)(3)).

(c) Section 5(a)(4) provides that the Commission shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods. 15 U.S.C. 2054(a)(4).

§ 1031.4 Effect of voluntary standards activities on Commission activities.

(a)(1) The Commission, in determining whether to begin proceedings to develop mandatory standards under the acts it administers, considers whether mandatory regulation is necessary or whether there is an existing voluntary standard that adequately addressed the problem and the extent to which that voluntary standard is complied with by the affected industry.

(2) The Commission acknowledges that there are situations in which adequate voluntary standards, in

combination with appropriate certification programs, may be appropriate to support a conclusion that a mandatory standard is not necessary. The Commission may find that a mandatory standard is not necessary where compliance with an existing voluntary standard would eliminate or adequately reduce the risk of injury associated with the product, contains requirements and test methods that have been evaluated and found acceptable by the Commission, and it is likely that there will be substantial compliance with the voluntary standard. Under such circumstances, the Commission may agree to encourage industry compliance with the voluntary standard and subsequently evaluate the effectiveness of the standard in terms of accident and injury reduction for products produced in compliance with the standard.

(3) In evaluating voluntary standards, the Commission will relate the requirements of the standard to the identified risks of injury and evaluate the requirements in terms of their effectiveness in eliminating or reducing the risks of injury. The evaluation of voluntary standards will be conducted by Commission staff members, including representatives of legal, economics, engineering, epidemiological, health sciences, human factors, other appropriate interests, and the Voluntary Standards Coordinator. The staff evaluation will be conducted in a manner similar to evaluations of standards being considered for promulgation as mandatory standards.

(4) In the event that the Commission has evaluated an existing voluntary standard and found it to be adequate in all but one or two areas, the Commission may defer the initiation of a mandatory rulemaking proceeding and request the voluntary standards organization to revise the standard to address the identified inadequacies expeditiously. In such cases, the Commission may monitor or participate in the development of these revisions.

(b) In the event the Commission determines that there is not existing voluntary standard that will eliminate or adequately reduce a risk of injury the Commission may commence a proceeding for the development of a consumer product safety rule or a regulation in accordance with section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058, section 3(f) of the Federal Hazardous Substances Act, 15 U.S.C. 1262(f), or section 4(a) of the Flammable Fabrics Act, 15 U.S.C. 1193(g), as may be applicable. In commencing such a proceeding, the Commission will publish an advance notice of proposed rulemaking which shall, among other things, invite any person to submit to the Commission an existing standard or portion of an existing standard, or to submit a statement of intention to modify or develop, within a reasonable period of time, a voluntary standard to address the risk of injury.

(c) The Commission will consider those provisions of a voluntary standard that have been reviewed, evaluated, and deemed to be adequate in addressing the specified risks of injury when initiating a mandatory consumer product safety rule or regulation under the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act, as may be applicable. Comments will be requested in the advance notice of proposed rulemaking on the adequacy of such voluntary standard provisions.

§ 1031.5 Criteria for Commission participation in voluntary standards activities.

The Commission will consider the extent to which the following criteria are met in considering Commission participation in the development of voluntary safety standards for consumer products:

(a) The likelihood the voluntary standard will eliminate or adequately reduce the risk of injury addressed that that there will be substantial compliance with the voluntary standard.

(b) The likelihood that the voluntary standard will be developed within a reasonable period of time.

(c) Exclusion, to the maximum extent possible, from the voluntary standard being developed, of requirements which will create anticompetitive effects or promote restraint of trade.

(d) Provisions for periodic and timely review of the standard, including review for anticompetitive effects, and revision or amendment as the need arises.

(e) Performance-oriented and not design-restrictive requirements, to the maximum practical extent, in any standard developed.

(f) Industry arrangements for achieving substantial industry compliance with the voluntary standard once it is issued, and the means of ascertaining such compliance based on overall market share of product productions.

(g) Provisions in the standard for marking products conforming to the standard so that future Commission investigation can indicate the involvement of such products in accidents and patterns of injury.

(h) Provisions for insuring that products identified as conforming to such standards will be subjected to a testing and certification (including self-certification) procedure, which will provide assurance that the products comply with the standard.

(i) The openness to all interested parties, and the establishment of procedures which will provide for meaningful participation in the development of such standards by representatives of producers, suppliers, distributors, retailers, consumers, small business and public interests. Meaningful representation by consumers and small business means, at a minimum, that among those representing different points of view are individuals having technical expertise in the areas under consideration.

§ 1031.6 Extent and form of Commission involvement in the development of voluntary standards.

(a) The Commission shall approve agency "participation", as defined below, in the development and support of voluntary safety standards for consumer products. The Executive Director shall approve Commission activities that are defined below as "monitoring." The extent of Commission involvement will be dependent upon the Commission's interest in the particular standards development activity and the Commission's priorities and resources.

(b) The Commission's interest in a specific voluntary standards activity will be based in part on the frequency and severity of injuries associated with the product, the involvement of the product in accidents, the susceptibility of the hazard to correction through standards, and the overall resources and priorities of the Commission. Commission involvement in voluntary standards activities generally will also be guided by the Commission's operating plan and budget.

(c) There are two levels of Commission involvement in voluntary standards activities, each of which reflects a different level of Commission involvement as set forth below:

(1) *Monitoring.* Monitoring involves maintaining an awareness of the voluntary standards development process through oral or written inquiries, receiving and reviewing minutes of meetings and copies of draft standards, or attending meetings for the purpose of observing and commenting during the standards development process in accordance with Subpart B of this part. For example, monitoring may involve responding to requests from voluntary standards organizations, standards development committees, trade associations and consumer

organizations; by providing information concerning the risks of injury associated with particular products, NEISS data, summaries and analyses of in-depth investigation reports; discussing Commission goals and objectives with regard to voluntary standards and improved consumer product safety; responding to requests for information concerning Commission programs; and initiating contacts with voluntary standards organizations to discuss cooperative voluntary standards activities.

(2) *Participating.* Participating involves regularly attending meetings of a standard development committee or group and taking an active part in the discussions of the committee and in developing the standard, in accordance with Subpart B of this part. Under certain conditions, the Commission will contribute to the deliberations of the committee by expanding resources to provide technical assistance (e.g., research, engineering support, and information and education programs) and administrative assistance (e.g., travel costs, hosting meetings, and secretarial functions) which would support the development and implementation of voluntary standards. Participating may also include Commission support of voluntary standards activities as described in § 1031.7.

(d) Normally, the total amount of Commission support given to a voluntary standards activity shall be no greater than that of all non-Federal participants in that activity, except where it is in the public interest to do so.

(e) In the event of duplication of effort by two or more groups (either inside or outside the Commission) in developing a voluntary standard for the same product or class of products, the Commission shall encourage the several groups to cooperate in the development of a single voluntary standard.

§ 1031.7 Commission support of voluntary standards activities.

(a) The Commission's support of voluntary safety standards development activities may include any one or a combination of the following actions:

(1) Providing epidemiological and health science infromation and explanations of hazards for consumer products.

(2) Encouraging the initiation of the development of voluntary standards for specific consumer products.

(3) Identifying specific risks of injury to be addressed in a voluntary standard.

(4) Performing or subsidizing technical assistance, including research, health science data, and engineering support, in the development of a voluntary standard activity in which the Commission is participating.

(5) Providing assistance on methods of disseminating information and education about the voluntary standard or its use.

(6) Performing staff evaluation of a voluntary standard to determine its adequacy and efficacy in reducing the risks of injury that have been identified by the Commission as being associated with the use of the product.

(7) Encouraging state and local governments to reference or incorporate the provisions of a voluntary standard in their regulations or ordinances and to participate in government or industrial model code development activities, so as to develop uniformity and minimize conflicting State and local regulations.

(8) Monitoring the number and market share of products conforming to a voluntary safety standard.

(9) Listing voluntary standards that adequately address specific hazards associated with the use of consumer products.

(10) Providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this Part.

(11) Providing administrative assistance, such as hosting meetings and secretarial assistance.

(12) Providing funding support for voluntary standards development, as permitted by the agency budget.

(13) Taking other actions that the Commission believes appropriate in a particular situation.

(b) [Reserved]

§ 1031.8 Voluntary Standards Coordinator.

(a) The Executive Director shall appoint a Voluntary Standards Coordinator to coordinate agency participation in voluntary standards bodies so that:

(1) The most effective use is made of agency personnel and resources and

(2) The views expressed by such personnel are in the public interest and, at a minimum, do not conflict with the interests and established views of the agency.

(b) The Voluntary Standards Coordinator is responsible for managing the Commission's voluntary standards program, as well as preparing and submitting to the Commission a semiannual summary of its voluntary standards activities. The summary shall set forth, among other things, the goals of each voluntary standard under development, the extent of CPSC activity (monitoring or participation; the current status of standards development and implementation) and, if any, recommendations for additional Commission action. The Voluntary Standards Coordinator shall also compile information on the Commission's voluntary standards activities for the Commission's annual report.

Subpart B—Employee Involvement

§ 1031.9 Scope and purpose.

(a) This subpart sets forth the Consumer Product Safety Commission's criteria and requirements governing membership and involvement by Commission officials and employees in the activities of voluntary standards development bodies.

(b) The Commission realizes there are advantages and benefits afforded by greater involvement of Commission personnel in the standard activities of domestic and international voluntary standards organizations. However, such involvement might present an appearance or possibility of the Commission giving preferential treatment to an organization or group or of the Commission losing its independence or impartiality. Also, such participation may present real or apparent conflict of interest situations.

(c) The purpose of this subpart is to further the objectives and programs of the Commission and to do so in a manner that ensures that such membership and participation:

(1) Is consistent with the intent of the Consumer Product Safety Act and the other actions administered by the Commission and with federal policy as set forth in the current version of OMB circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards;

(2) Is not contrary to the public interest;

(3) Presents no real or apparent conflict of interest and does not result in or create the appearance of the Commission giving preferential treatment to an organization or group or the Commission compromising its independence or impartiality; and

(4) Takes into account Commission resources and priorities.

(d) In general, Commission employees must obtain approval from their supervisor and appropriate agency management to be involved in voluntary standards activities. They should also strive to apprise the Voluntary Standards Coordinator, where practicable, as to their involvement in voluntary standards activities.

(3) All Commission employees involved in voluntary standards activities are subject to any restrictions for avoiding conflicts of interest and for

avoiding situations that would present an appearance of bias.

§ 1031.10 Definitions.

For purposes of describing the level of involvement in voluntary standards activities for which Commission employees may be authorized, the following definitions apply:

(a) *Membership.* Membership is the status of an employee who joins a voluntary standards development or advisory organization or subgroup and is listed as a member. It includes all oral and written communications which are incidental to such membership.

(b) *Participation.* Participation is the active, ongoing involvement of an official or employee in the development of a new or revised voluntary standard pertaining to a particular consumer product or to a group of products that is the subject of a Commission hazard project. These projects should be one of those that are approved by the Commission, either by virtue of the agency's annual budget or operating plan, or by other specific agency authorization or decision, and are in accord with Subpart A. Participation includes regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, registering opinions and expending other resources in support of a voluntary standard development activity. It includes all oral and written communications which are part of the participation process.

(c) *Monitoring.* Monitoring is involvement by an official or employee in maintaining an awareness of the voluntary standards development process by attendance at meetings, receiving and reviewing minutes of standards development meetings and copies of draft standards, and commenting during the standards development process. It involves all oral and written communications which are part of the monitoring process. These monitoring activities must be related to general voluntary standards projects set forth in the agency's annual budget or operating plan or otherwise approved by the agency.

(d) *Observation.* Observation is the attendance by an official or employee at a meeting of a voluntary standards developing group for the purpose of observing and gathering information.

(e) *Communication.* Communication is the oral or written contact by an official or employee with a representative or committee of a voluntary standards organization or advisory group.

§ 1031.11 Procedural safeguards.

(a) Subject to the provisions of this subpart and budgetary and time constraints, Commission employees may be involved in voluntary standards activities that will further the objectives and programs of the Commission, are consistent with ongoing and anticipated Commission regulatory programs as set forth in the agency's operating plan, and are in accord with the Commission's policy statement on participation in voluntary standards activities set forth in Subpart A of this part.

(b) Commission employees who are involved in the development of a voluntary standard and who later participate in an official evaluation of that standard for the Commission shall describe in any information, oral or written, presented to the Commission, the extent of their involvement in the development of the standard. Any evaluation or recommendation for Commission actions by such employee shall strive to be as objective as possible and be reviewed by higher-level Commission officials or employees prior to submission to the Commission.

(c) Involvement of a Commission official or employee in a voluntary standards committee shall be predicated on an understanding by the voluntary standards group that participation by Commission officials and employees is on a non-voting basis.

(d) In no case shall Commission employees or officials vote or otherwise formally indicate approval or disapproval of a voluntary standard during the course of a voluntary standard development process.

(e) Commission employees and officials who are involved in the development of voluntary standards may not accept voluntary standards committee leadership positions, e.g., committee chairman or secretary. Subject to prior approval by the Executive Director, a Commission employee or official may accept other committee positions only if it appears to be clearly in the public interest for the employee to carry out the functions of that specific position.

§ 1031.12 Membership criteria.

(a) The Commissioners, their special assistants, and Commission officials and employees holding the positions listed below, may not become members of a voluntary standards group because they either have the responsibility for making final decisions, or advise those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product.

(1) The Commissioners

(2) The Commissioners Special Assistants

(3) The General Counsel and General Counsel Staff

(4) The Executive Director, The Deputy Executive Director, and special assistants to the Executive Director

(5) The Associate Executive Directors and Office Directors

(6) The Director of the Office of Program Management and Budget and any Special Assistants to the Director.

(b) All other officials and employees not covered under § 1031.12(a) may be advisory, non-voting members of voluntary standards development and advisory groups with the advance approval of the Executive Director. In particular, the Commission's Voluntary Standards Coordinator may accept such membership.

(c) Commission employees or officials who have the approval of the Executive Director to accept membership in a voluntary standards organization or group pursuant to paragraph (b) of this section shall apprise the General Counsel and the Voluntary Standards Coordinator prior to their acceptance.

(d) Commission officials or employees who desire to become a member of a voluntary standards body or group in their individual capacity must obtain prior approval of the Commission's Ethics Counselor for an outside activity pursuant to the Commission's Employee Standards of Conduct. (16 CFR Part 1030).

§ 1031.13 Participation and monitoring criteria.

(a) Commission officials, other than those positions listed in § 1031.12(a), may participate in or monitor the development of voluntary safety standards for consumer products, but only in their official capacity as employees of the Commission and if permitted to do so by their supervisor and any other person designated by agency management procedures. Such participation or monitoring shall be in accordance with Commission procedures designed to assure staff review and consensus.

(b) Employees in positions listed in § 1031.12(a) (4), (5), and (6) may, on a case-by-case basis, participate in or monitor the development of a voluntary standard provided that they have the specific advance approval of the Commission.

(c) Except in extraordinary circumstances and when approved in advance by the Executive Director in

accordance with the provisions of the Commission's meetings policy (16 CFR Part 1012), Commission personnel shall not become involved in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation. Attendance of Commission personnel at a voluntary standard meeting shall be noted in the public calendar in accordance with the Commission's meetings policy.

(d) Generally, Commission employees may become involved in the development of voluntary standards only if they are made available for comment by all interested parties prior to their use or adoption.

(e) Involvement by Commission officials and employees in voluntary standards bodies or standards-developing groups does not, of itself, connote Commission agreement with, or endorsement of, decisions reached, approved or published by such bodies or groups.

§ 1031.14 Observation criteria.

A Commission official or employee may, on occasion, attend voluntary standards meetings for the sole purpose of observation, with the advance approval of his or her supervisor and any other person designated by agency management procedures. Commission officials and employees shall notify the Voluntary Standard Coordinator, for information purposes, prior to observing a voluntary standards meeting.

§ 1032.15 Communication criteria.

(a) Commission officials and employees, who are not in the positions listed in § 1031.12(a), or who are not already authorized to communicate with a voluntary standards group or representative incidental to their approved membership in a voluntary standard organization or group or as part of their participation or monitoring of a voluntary standard, may:

(1) Communicate, within the scope of their duties, with a voluntary standard group or representative on voluntary standards matters which are substantive in nature, i.e., matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing the standard, only with the specific advance approval from the person or persons to whom they apply to obtain approval for participation or monitoring pursuant to § 1031.13. The approval may indicate the duration of the approval and any other conditions.

(2) Communicate, within the scope of their duties, with a voluntary standards group or representative concerning voluntary standards activities which are not substantive in nature.

(b) Commission employees may communicate with voluntary standards organizations only in accordance with Commission procedures designed to assure staff review and consensus.

(c) Commissioners can engage in substantive and non-substantive written communications with voluntary standards bodies or representatives, provided a disclaimer in such communications indicates that any substantive views expressed are only their individual views and are not necessarily those of the Commission. Where a previous official Commission vote has taken place, that vote should also be noted in any such communication. Copies of such communications shall thereafter be provided to the other Commissioners, the Office of the Secretary, and the Voluntary Standards Coordinator.

(d) The Voluntary Standards Coordinator shall be furnished a copy of each written communication of a substantive nature and a report of each oral communication of a substantive nature between a Commission official or employee and a voluntary standards organization or representative which pertains to a voluntary standards activity. The information shall be provided to the Voluntary Standards Coordinator as soon as practicable after the communication has taken place.

Date: October 31, 1988.

Sadye E. Dunn,

Secretary.

[FR Doc. 88-25574 Filed 11-4-88; 8:45 am]

BILLING CODE 6355-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Conduct of Complainants Prior to the Institution of Investigations of Unfair Practices in Import Trade; Articulation of Duty of Candor, Procedures for Alleging a Violation of Duty, and Sanctions for Violations

AGENCY: U.S. International Trade Commission.

AGENCY: Notice of proposed rulemaking.

SUMMARY: The proposed rules would amend the Commission's *Rules of Practice and Procedure* to add sections addressing the duty of candor owned by persons who file complaints with the Commission seeking relief under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The new sections set forth, in particular, the standard of conduct expected of complainants, the procedures for asserting and prosecuting allegations of wrongful conduct, and the sanctions which the Commission may impose upon those who are found to have violated the articulated standard.

Comments are requested on the proposed rules.

DATES: All comments must be received on or before December 22, 1988.

ADDRESSES: All comments concerning the proposed rules should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Comments should conform with Commission rule 201.8 (19 CFR 201.8).

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., 202-252-1107, or Tim Yaworski, Esq., 202-252-1906, Office of the General Counsel, U.S. International Trade Commission.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107), expressly authorizes the Commission to impose by rule certain sanctions for abuse of process.

These proposed rules are being promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty (30) days prior to their effective date. *See* 5 U.S.C. 553.

The Commission has determined that the proposed rules do not constitute major rules for the purposes of Executive Order 12291, because they do not fall within the categories described in section (b) of the Executive Order.

Explanation of Proposed Rules

This rulemaking is prompted by allegations that certain complainants misrepresent or omit material facts in section 337 complaints. In response to these allegations, the Commission has determined that rules, developed after

the benefit of public comment, may be advisable to articulate the duty of candor owed by complainants to the Commission in the pre-institution phase of section 337 investigations.

The Standard of Conduct

The proposed rules set forth the standard of conduct expected of complainants prior to the institution of section 337 investigations. The standard applies to the conduct of complainants prior to institution because pre-institution representations of complainants are relief upon by the Commission when making institution decisions, there are costly and immediate consequences of institution, and complainants' pre-institution representations are made in the context of an essentially *ex parte* proceeding. As a result of the *ex parte* character of pre-institution proceedings and the limited time frame in which the Commission must make its institution decisions, there is often limited scrutiny of a complainant's submissions by the Commission and by persons with interests adverse to those of complainant. By contrast, submissions by all parties after institution are subjected to greater adversarial scrutiny and, as a result, the Commission often receives additional information which is helpful in evaluating and understanding the submissions of the parties.

The proposed duty of candor is violated when there is clear and convincing evidence of: (1) A failure to disclose material information, or a submission of false material information; and (2) an intent to mislead the Commission. Information is "material" when there is a substantial likelihood that a reasonable decisionmaker would have considered the nondisclosed or false information to be important in deciding whether to institute an investigation, not whether the information would have been dispositive. The "intent to mislead" element includes gross negligence. This standard is patterned after the standard of conduct articulated in 37 CFR 1.56 by the U.S. Patent and Trademark Office (PTO). Because practice before the Commission and the PTO differs in several respects, the Commission would not view PTO and court decisions interpreting the PTO standard as dispositive, or necessarily persuasive authority, in applying the Commission's standard of conduct.

Procedures for Alleging a Violation of the Standard of Conduct

If a section 337 investigation has been instituted by the Commission, the proposed rules provide that any party to the investigation may seek a duty of candor investigation. In addition, if the investigation is still pending before an ALJ, the ALJ may independently commence such an investigation. If the Commission has decided not to institute an investigation, the proposed respondents or the Commission's Office of Unfair Import Investigations (OUII) may seek commencement of a duty of candor investigation. In either event, the Commission may, at its own initiative, direct the Chief Administrative Law Judge to institute a duty of candor investigation.

Under the proposed rules, any duty of candor issue may be raised by motion to investigate during or after a section 337 investigation, provided that it is raised within 90 days after the Commission has issued a final determination on violation or within 90 days of any other final determination terminating the investigation. If no section 337 investigation has been instituted, any motion for investigation of duty of candor issues must be filed within 90 days after the Commission has voted not to institute a section 337 proceeding, provided that no motion to investigate will be entertained prior to the decision not to institute. These time limits are proposed in order to prevent a party from raising claims regarding the pre-institution conduct of a complainant many months or years after a case has terminated and thereby causing such allegations to be litigated on the basis of stale evidence, much of which may be based on the recollection of witnesses. The Commission expects that most facts relevant to a duty of candor issue will be discovered before or during the discovery phase of an investigation and, therefore, that the proposed time limits would not be excessively burdensome or unreasonable. However, the Commission recognizes that a rare case might arise where a complainant's wrongful conduct could not reasonably be discovered until after the prescribed period for raising duty of candor issues. In that event, a firm deadline for raising candor issues would benefit principally the wrongdoing complainant. Therefore, the proposed rules permit motions to investigate after the 90-day deadline if good cause is shown for the late submission. The moving party would be required to submit an affidavit stating that the motion is based on newly discovered evidence that could not have been discovered more expeditiously.

The proposed rules provide that each motion to investigate filed by a private party must be verified. This proposal is intended to discourage the filing of meritless motions. All motions should, at a minimum, be based on information and belief, must not be premised on mere speculation or conjecture, and must set forth the specific sanction sought by the movant. The articulation of a duty of candor is not intended to create merely another litigation tactic which private parties could utilize to harass and intimidate their adversaries or to retry issues of fact which already have been addressed by the ALJ in an initial determination on violation.

The proposed rules further provide that any motion to investigate must include allegations sufficient to warrant an investigation of the complainant's pre-institution conduct and must be specific. A failure to include specific and sufficient allegations in a motion to investigate could result in denial of the motion by an ALJ without the commencement of an investigation into the allegations.

If the motion to investigate is filed when a particular ALJ does not have jurisdiction over the investigation, the proposed rules provide that the motion be directed to the Chief Administrative Law Judge or such ALJ as he may designate. If a motion is filed while an ALJ has jurisdiction over an ongoing section 337 investigation, the motion would be filed with the ALJ. The ALJ presiding over the duty of candor motion would be authorized by the rules (1) to deny the motion if a *prima facie* case of conduct violating the commission's regulations on duty of candor is not alleged or a motion by a private party is not verified, (2) to consider the motion during the course of the ongoing investigation, if any, of complainant's allegations of a section 337 violation and issue a recommended determination (RD) reflecting his findings, or (3) at his discretion, to defer consideration of the duty of candor allegations until after he has issued an initial determination on violation or an initial determination otherwise terminating the investigation, provided that the ALJ would be required to issue an RD resolving all such allegations no later than 180 days after the motion to investigate is filed or an initial determination terminating the investigation is issued, whichever is later.

The proposed rules permit the ALJ to defer consideration of duty of candor issues because of the short statutory time limits that already restrict the amount of time within which ALJs must complete the evidentiary stage of section 337 investigations. To require an ALJ to consider and resolve all candor issues during the pendency of a section 337 hearing would, in many cases, be unduly burdensome and would hamper

the ALJ's ability to adequately address the violation issues. On the other hand, the Commission recognizes that certain duty of candor issues may be most efficiently addressed during the violation hearing and may be closely related to violation issues. The Commission therefore proposes that the ALJ be accorded discretion to decide when candor issues should be considered. However, recognizing that the Commission and the parties to an investigation have an interest in resolving duty of candor issues in a timely fashion, the Commission proposes a provision which would require ALJs to address such issues within 180 days after issuance of a determination which terminates an investigation, unless the motion to investigate candor issues is filed after such a determination is issued.

Findings of the Administrative Law Judge

Upon completion of any investigation of duty of candor issues, the proposed rules provide that the presiding ALJ is to issue an RD which includes specific findings of fact and a conclusion regarding whether there has been a violation of the duty of candor. If the ALJ finds that there has been a violation of the duty, he is to include in the RD a recommendation with respect to the appropriate sanctions, if any, for the violation. In addition, the proposed rules instruct the presiding ALJ to determine whether, if he has concluded that there has been *no violation* of the duty of candor, the motion to investigate the duty of candor issue was frivolous. The finding regarding frivolous motions is intended to discourage the filing of meritless motions for investigation of candor issues. If the ALJ finds that the motion to investigate the duty of candor issue was frivolous, he is also to recommend appropriate sanctions, if any, for the filing of a frivolous motion.

Sanctions for Violations of the Duty of Candor

The proposed rules list the sanctions available to the Commission when it finds that the duty of candor has been violated. The list of sanctions includes the following: (1) A private or public reprimand by the Commission; (2) temporary or permanent disqualification from practicing or appearing in any capacity before the Commission; (3) notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation; (4) the award of costs and attorneys fees proximately caused by the misrepresentations or omissions which were the basis for the finding of a duty of candor violation; (5) referral to the U.S. Attorney for prosecution pursuant to 18 U.S.C. 1001; and (6) any combination of the listed sanctions. This list is included to provide parties with notice of the kinds of sanctions which could be imposed.

Sanctions for the Filing of Frivolous Motions to Investigate

The proposed rules also include a provision authorizing the award of sanctions when a private party has filed a frivolous motion to investigate allegations that a complainant has violated the duty of candor. These sanctions are set forth to discourage frivolous motions. Included in the list of sanctions is a private or public reprimand, disqualification from practicing or appearing in any capacity before the Commission, and notification of appropriate professional associations or licensing authorities of the facts underlying the duty of candor investigation. These sanctions would not be available against a Commission investigative attorney (IA) for several reasons. First, it is not expected that IAs will file frivolous motions because they lack the incentive to do so. The IAs represent the "public interest" and participate in proceedings in order to ensure that the record upon which the Commission bases its determination is as complete as possible. The legal positions of IAs are not dictated by private interests which are adverse to the interests of complainants and/or respondents. Therefore, frivolous motions to investigate by IAs are unlikely. Second, in the unlikely event that a frivolous motion were filed by an IA, the Commission believes that any sanction should be in the form of a personnel action and should be determined by the attorney's supervisors, not by an administrative law judge.

The proposed rule does not list the award of costs and attorneys fees as a sanction for frivolous motions because the Commission does not want to encourage parties to argue and litigate about the frivolity of motions to investigate simply because of the financial incentive of recovering fees. Instead, the proposed rule expressly includes sanctions which are intended to discourage frivolous claims without opening the floodgates to arguments about frivolous motions. Nonetheless, the Commission encourages comments on the advisability of including fees as a listed sanction for filing a frivolous motion to investigate.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Business and industry, Candor, Customs duties and inspection, Imports, Investigations

For the reasons set forth in the preamble, the U.S. International Trade Commission proposes to amend 19 CFR Part 210 as follows:

PART 210—[AMENDED]

1. The authority citation for Part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, 1337.

2. Subpart H, consisting of §§ 210.80 through 210.85, is added to read as follows:

Subpart H—Complainants' Pre-Institution Duty of Candor

Sec.

Subpart H—Complainants' Pre-Institution Duty of Candor

§ 210.80 Purpose and applicability of subpart.

This subpart defines the duty of candor owed by complainants in section 337 investigations during the pre-institution phase of such investigations. The articulation by rule of such a duty is intended to clarify that complainants cannot misrepresent and/or omit material facts in pre-institution submissions to the Commission and that the Commission will sanction such conduct if it violates the articulated duty.

§ 210.81 Standard of conduct.

(a) *The duty of candor is owed by the following:* (1) The complainant and all individuals who verify the complaint;

(2) Counsel for the complainant who prepares and prosecutes the complaint prior to the institution of a section 337 investigation; and

(3) All other individuals who are substantially involved in the preparation and prosecution of the complaint prior to institution.

(b) *Standard of Conduct.* (1) Such persons shall not, with an intent to mislead the Commission, fail to disclose material information to the Commission during the pre-institution phase of section 337 investigations or submit false material information during that phase of an investigation. Information is "material" when there is a substantial likelihood that a reasonable

decisionmaker would have considered the nondisclosed or false information to be important in deciding whether to institute an investigation. The "intent to mislead" element includes gross negligence.

(2) Violation of this duty shall be established with clear and convincing evidence.

§ 210.82 Procedures for alleging a violation of standard of conduct.

(a) *Parties who may request an investigation of complainant's candor.* (1) If a section 337 investigation has been instituted by the Commission, any party to the investigation may seek a duty of candor investigation. In addition, if the investigation is still pending before an administrative law judge, the administrative law judge may independently commense such an investigation.

(2) If the Commission has decided not to institute a section 337 investigation, the proposed respondents or the Office of Unfair Import Investigations may seek commencement of a duty of candor investigation.

(3) In either event, the Commission may, at its own initiative, direct the Chief Administrative Law Judge to institute a duty of candor investigation.

(b) *Timing of motions to commence an investigation.* (1) If a section 337 investigation has been instituted by the Commission, a duty of candor issue may be raised by motion to investigate during or after the section 337 investigation, provided that the motion must be filed on or before the ninetieth (90th) day after the Commission has issued a final determination on violation or on or before the ninetieth (90th) day after any other final determination termining the investigation.

(2) If no investigation has been instituted, any motion for investigation must be filed on or before the ninetieth (90th) day after the Commission has voted not to institute the investigation.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section a motion to investigate a duty of candor issue may be filed after the ninety (90)-day deadlines set forth therein if the motion is accompanied by an affidavit stating that the motion is based upon newly discovered evidence and that the evidence could not have been discovered earlier. Specific facts in support of these statements must be alleged.

(c) *Requirements for motions to investigate.* (1) Each motion by a private party to investigate must be made under oath by the moving party or his duly authorized officer, attorney, or agent, with the name, address, and phone number of the party and any such officer, attorney, or agent.

(2) Each motion must be based on personal knowledge or on information and belief, must include specific allegations sufficient to warrant an investigation of the complainant's pre-institution conduct and submissions, and must set forth the specific sanction requested by the movant.

(d) *Filing of the motion and the timing of Commission consideration.* (1) All such motions, whether brought at any time during an investigation, after the conclusion of an investigation, or after the Commission has decided not to institute an investigation, shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the Chief Administrative Law Judge or such administrative law judge as he may designate.

(2) Upon receipt of such a motion, the administrative law judge may deny the motion if it fails to satisfy the requirements of § 210.82(c), consider the motion during the course of the investigation, if any, of complainant's allegations of a section 337 violation and issue a recommended determination regarding the duty of candor issues, or at his discretion, defer consideration of the duty of candor allegations until after he has issued an initial determination on violation or an initial determination otherwise terminating the section 337 investigation, provided that the administrative law judge shall issue a recommended determination resolving all duty of candor allegations no later than one hundred and eighty (180) days after the motion to investigate was filed or the administrative law judge issued a determination terminating the investigation, whichever is later.

§ 210.83 Findings of the administrative law judge

(a) Upon completion of any investigation of duty of candor issue, the administrative law judge is to issue a recommended determination which includes specific findings of fact and an ultimate conclusion regarding whether there has been a violation of the duty of candor owed to the Commission. If the administarative law judge finds that there has been a violation of the duty, he is to include in the recommended determination a recommendation with respect to the appropirate sanctions, if any, for the violation and, if appropriate, any specific findings of fact regarding the sanctions issue.

(b) If he has concluded that there has been no violation of the duty of candor, the administrative law judge's recommended determination is to include a conclusion regarding whether or not the motion to investigate the duty of candor issue was frivolous and specific findings of fact relating to that conclusion. If the administrative law judge finds that the motion to investigate the duty of candor issue was frivolous, he is also to recommend appropriate sanctions, if any, for the filing of the frivolous motion.

§ 210.84 Sanctions for violations of the duty of candor.

The following sanctions may be imposed by the Commission in the event that it determines that the duty of candor, as defined in section 210.81, has been violated:

(a) A private or public reprimand by the Commission;

(b) Temporary or permanent disqualification from practicing or appearing in any capacity before the Commission;

(c) Notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation;

(d) The award of costs and attorneys fees proximately caused by misrepresentations or omissions which resulted in the finding of a duty of candor violation;

(e) Referral to the U.S. Attorney for prosection pursuant to 18 U.S.C. 1001; and

(f) Any combination of the sanctions listed above.

§ 210.85 Sanctions for the filing of frivolous motions to investigate.

The following sanctions are available to the Commission when a private party has filed a frivolous motion to investigate allegations that a complainant has violated the duty of candor;

(a) A private or public reprimand by the Commission;

(b) Temporary or permanent disqualification from practicing or appearing in any capacity before the Commission;

(c) Notification of appropriate professional associations and/or licensing authorities of the facts underlying the duty of candor investigation; and

(d) Any combination of the sanctions listed above.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 31, 1988.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 85N-0548]

Proposed Affirmation of GRAS Status of High Fructose Corn Syrup

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that high fructose corn syrup is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated on the basis of the agency's evaluation of six industry petitioners and of the agency's comprehensive safety review of corn sugar, corn syrup, invert sugar, and sucrose. Published elsewhere in this issue of the **Federal Register** is a final rule affirming the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

DATE: Written comments by January 6, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 230857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Listing of High Fructose Corn Syrup as GRAS in Part 182

In the **Federal Register** of February 8, 1983 (48 FR 5716, FDA published a regulation in 21 CFR Part 182 that listed high fructose corn syrup as GRAS for use in food. FDA published this regulation in response to six industry petitions that requested GRAS status for certain insoluble glucose isomerase enzyme preparations used to make high fructose corn syrup and for the manufactured product itself.

The basis for listing high fructose corn syrup in Part 182 was that (1) this substance is made with enzyme preparations that the agency had affirmed as GRAS, and (2) the saccharide composition (glucose to fructose ratio) of high fructose corn syrup is approximately the same as that of honey, invert sugar, and the disaccharide sucrose. In addition, the minor components (primarily higher saccharides of glucose) of high fructose corn syrup are also found at similar levels in corn syrup and corn sugar which are already on the GRAS list. Therefore, FDA concluded that high fructose corn syrup is as safe for use in food as sucrose, corn sugar, corn syrup, and invert sugar. However,, because the agency had not made a decision on whether it would affirm the latter ingredients as GRAS, it could not make this decision for high fructose corn syrup at that time.

The agency stated that when it completed its comprehensive safety review of corn sugar (dextrose), corn syrup, invert sugar, and sucrose, it would determine whether the data on these substances provided an adequate basis to affirm the GRAS status of high fructose corn syrup.

B. Identity of High Fructose Corn Syrup

Paragraph (a) of 21 CFR 182.1866 describes high fructose corn syrup as "a sweet, nutritive saccharide mixture containing approximately 52 percent (dry weight) glucose, 43 percent (dry weight) fructose, and 5 percent (dry weight) other saccharides. It is prepared as a clear aqueous solution from high dextrose equivalent corn syrup hydrolystate by partial enzymatic conversion of glucose (dextrose) to fructose using an insoluble glucose isomerase enzyme preparation described in § 184.1374 of this chapter."

The proposed regulation applies only to the high fructose corn syrup that meets the description as specified in 21 CFR 182.1866(a). The agency is aware that there are other products on the market that are also called "high fructose corn syrup" but that have fructose contents of greater than 43 percent (dry weight). These products generally contain either 55 percent fructose (HFCS-55) or 90 percent fructose (HFCS-90) on a dry weight basis. FDA is not proposing to affirm these products as GRAS because, as discussed later in this document, their manufacture involves the use of processing materials that are not used in making the 43 percent fructose product, and the agency does not have adequate information on these materials to assess the safety of their residual levels in these products.

C. Definitions

To clarily its discussion of the proposed GRAS affirmation of high fructose corn syrup, the agency is defining and explaining important terms used in this document.

The term "sugar" is used to refer to any of the mono- and disaccharides glucose, fructose, sucrose, and maltose, which are found in sucrose, corn sugar, corn syrup, invert sugar, and high fructose corn syrup. The term "sugar" has traditionally been used by consumers and by the agency (see 21 CFR 145.3(f), 146.3(f), and 170.3(n)(41)) as a synonym for the sweetener sucrose. In this document, however the sweetener sucrose is identified as "sucrose." The agency will use the term "sugars" to describe mixtures of mono- and disaccharides and collectively all forms of sugar present in a food.

FDA will use the term "sweetener" to refer to any one or more of the carbohydrate food ingredients sucrose, corn sugar, corn syrup and solids, invert sugar, high fructose corn syrup, honey, and other edible syrups. The term "sweetener", as used in this document, is not intended to include any other nutritive or nonnutritive sweeteners that are added to food.

High fructose corn syrup, as described earlier, is composed primarily of approximately equimolar amounts of the monosaccharides glucose and fructose with some higher molecular weight saccharides. Sucrose is the disaccharide of glucose and fructose. Invert sugar is composed of glucose, fructose, and sucrose. Corn sugar, commonly referred to as dextrose, is crystalline α-D-glucose. Corn syrup contains glucose and maltose (a disaccharide of glucose), as well as higher molecular weight saccharides. These five ingredients may also contain water and residues from the carbohydrate source material and from processing.

II. The Safety Review of High Fructose Corn Syrup

A. Sources of Information for the Safety Evaluation of High Fructose Corn Syrup

In evaluating the safety of high fructose corn syrup as a GRAS ingredient, the agency used the following sources of information:

1. GRAS Affirmation Petitions on High Fructose Corn Syrup (4G0042, 6G0060, 7G0080, 7G0084, 7G0086, and 1G0271)

These petitions describe high fructose corn syrup as a mixture of sugars, including approximately 52 percent glucose (dextrose), 43 percent fructose, and 5 percent maltose, isomaltose, and other sugars that are natural components of corn syrup. The petitions stated that high fructose corn syrup is made by the action of a glucose isomerase enzyme preparation on high dextrose equivalent corn syrup.

Each of the five petitions requested GRAS affirmation for a specific glucose isomerase preparation derived from one of five microbial species. The identity of the enzyme preparation was based on the identity of the microbial source and the identity of the materials used to produce and immobilize the enzyme preparation.

The petitions provided precise taxonomic classification of each microbial source. The petitions contained information that described the method and materials used to produce and to immobilize the enzyme-containing cellular materials.

The petitions contained general manufacturing information for high fructose corn syrup that provides a basis upon which to determine the residual levels of enzyme preparation that would occur in high fructose corn syrup. This information demonstrated that, under the current methods, only very small amount of enzyme preparation would enter the product. The enzyme preparation is extensively washed to remove processing materials before it is used. In addition, only relatively small amounts of the washed enzyme preparation are used to catalyze the conversion of large quantities of glucose syrup.

The petitions also contained published data on the microbial sources of the enzyme preparation as well as unpublished animal feeding studies that established safe levels of the enzyme preparation in the product. A more detailed discussion of the identity of high fructose corn syrup, of its method of manufacture, and of the rationale for the agency's safety determination for the enzyme preparations used in the manufacture of high fructose corn syrup is found in the final rule published in the **Federal Register** of February 8, 1983 (48 FR 5716).

2. The Select Committee Report: "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar as Food Ingredients" (SCOGS–50) (Ref. 1)

This report is relevant to the safety of high fructose corn syrup because any adverse health effects associated with the consumption of corn sugar, corn syrup, and invert sugar are likely also to be associated with high fructose corn syrup. High fructose corn syrup, corn sugar, and corn syrup all contain glucose, maltose, and higher saccharides, as well as residues from the processing aids and from the corn used to manufacture these sweeteners. Both high fructose corn syrup and invert sugar contain glucose and fructose. Therefore, any adverse health effect of consumption of corn sugar, corn syrup, or invert sugar may also occur from consumption of high fructose corn syrup.

The report of the Select Committee also contains a limited opinion and conclusion regarding the safety of high fructose corn syrup. The report states that the consumption of dextrose and corn syrup has increased markedly in recent years and a major part of the increase resulted from the introduction of high fructose corn syrup. The Select Committee cited predictions that high fructose corn syrup would replace 30 percent of the applications for sucrose and invert sugar. In the opinion of the Select Committee there is no evidence such replacement would have an adverse effect on public health. A more detailed description of the findings and the conclusions of the Select Committee on the safety of corn sugar, corn syrup, and invert sugar was published in the agency's proposal to affirm the GRAS status of these food ingredients (47 FR 53917; November 30, 1982).

3. The Select Committee Report: "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS–69) (Ref. 2)

Sucrose is a disaccharide that is hydrolyzed in the intestine and is absorbed as its component monosaccharides, glucose and fructose. High fructose corn syrup also is essentially a mixture of glucose and fructose in approximately equal proportions. Because of the similarity in sugars composition between these two sweeteners at the time of absorption, any reported adverse health effects of sucrose consumption are likely to occur also from consumption of high fructose corn syrup. Thus, the Select Committee's report on sucrose is relevant to the safety evaluation of high fructose corn syrup. A description of the findings and the conclusions of the Select Committee on the safety of sucrose was published in the agency's proposal to affirm the GRAS status of sucrose as a food ingredient (47 FR 53923; November 30, 1982).

4. The Task Force Report: "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners" (Ref. 3)

In November 1983, the agency established the Sugars Task Force composed of scientists from FDA's Center for Food Safety and Applied Nutrition to update the Select Committee's safety reviews of corn sugar, corn syrup, and invert sugar and of sucrose.

In its safety evaluations of these substances, the Select Committee found: (1) That the safety of a specific sweetener can be assessed only as part of a safety assessment of total sweetner consumption (see the Select Committee's conclusions for sucrose and for corn sugar, corn syrup, and invert sugar); and (2) that the safety of an individual sweetener is contingent upon the safety of the "simple sugars" that it contains (see especially the Select Committee's conclusion for corn sugar, corn syrup, and invert sugar). Based on these findings, the agency charged the Task Force to conduct a single safety review of all sweeteners.

The Task Force review focused on the sugars contained in the sweeteners rather than on the sweeteners themselves. It used the conclusions it reached on the safety of the sugars to assess the safety of the sweeteners that contain these sugars.

The Task Force has completed its safety review. FDA has placed a copy of the Task Force's report on file in the Dockets Management Branch (address above) in Docket No. 76N–0141. This report contains safety data on fructose, glucose, maltose, and sucrose that are relevant to a safety assessment of high fructose corn syrup. It also contains an assessment of various sugars intakes and sweetener availability and thereby provides a basis for estimating current consumption of high fructose corn syrup.

A more complete description of the Task Force's safety review and of the conclusions of the Task Force regarding the safety of the dietary sugars (glucose, fructose, sucrose, and maltose) is provided elsewhere in this issue of the **Federal Register** in the final rule that affirms the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

B. Findings of the Safety Review for High Fructose Corn Syrup

1. Consumption of High Fructose Corn Syrup

The Task Force, in its report, estimated that in 1984 the average daily intake of sugars from high fructose corn syrup was 19 grams per person per day, and that for the 90th percentile consumers of total sugars, it was 43 grams per person per day (Ref. 3). Because the sugars in high fructose corn syrup (glucose, fructose, and maltose) represent approximately 98 percent of its dry weight, the agency concludes that these values represent appropriate estimates of the average daily intakes of high fructose corn syrup itself on a dry weight basis.

In its report, the Task Force estimated intakes of the sugars glucose, fructose, sucrose, and maltose by combining food consumption data from the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey of 1977–1978 with sugars composition data (Ref. 3). For details of how the Task

Force made its estimate see the final rule, Ref. 2.

It should be noted that the consumer exposure data relating to high fructose corn syrup consumption presented in the Task Force report included current use of HFCS–55. The exposure data, however, did not include HFCS–90 because this product is not currently used in a significant amount, and data required to make intake estimates of this product are not available (Ref. 3).

The Task Force also assessed trends in sweetener availability based on USDA disappearance data. Disappearance data for sweeteners represent estimates of domestic shipments (deliveries) of sweeteners by refiners and importers to primary buyers, such as food industries, trades, wholesalers, and retailers (Ref. 3). The data thus represent approximate estimates of the total amount (dry weight) of sweeteners available for consumptoin by the U.S. population and not the amount of sweeteners actually consumed.

The Task Force's assessment of USDA disappearance data for total sweeteners showed that, since 1970, availability of total sweeteners has been reasonably constant (Ref. 3). The same data show, however, that during this period, there was a significant change in types of sweeteners used. High fructose corn syrup usage increased rapidly, accompanied by a complete decrease in sucrose usage. These data also show that high fructose corn syrup usage has now plateaued, and no further increase is expected in the near future (Ref. 3). Based on this projection, the agency anticipates little future change in exposure to high fructose corn syrup.

2. Safety of High Fructose Corn Syrup

In its reports evaluating the safety of sucrose and the safety of corn sugar, corn syrup, and invert sugar, the Select Committee concluded (Refs. 1 and 2) that sucrose, glucose, and fructose (and therefore corn sugar, corn syrup, high fructose corn syrup, and invert sugar) are cariogenic. However, other than the contribution of dental caries, the Select Committee found no evidence that sucrose, corn sugar, corn syrup, and invert sugar are a hazard to the public when they are used in the manner practiced and at the levels used at the time of the reports. The Select Committee noted, however, that it could not determine whether an increase in total sweetener consumption (the total of sucrose, corn syrup, and invert sugar) would constitute a dietary hazard.

In its report on corn syrup, corn syrup, and invert sugar, the Select Committee also expressed the opinion that (Ref. 1):

> High fructose corn syrups are predicted to increase in production and to replace sucrose and invert sugar in up to 30 percent of their applications by 1980–85, based largely on relative costs. There is no evidence that such replacement, *per se*, would have an adverse effect on public health.

This opinion is based on the assumption that high fructose corn syrups will be formulated in the present manner, i.e., approximately equimolar mixture of glucose and fructose. It does not extend to the use of fructose syrups or other types of high fructose corn syrups that are predominantly fructose, because these syrups may have health effects that differ substantially from the types manufactured currently.

In its report evaluating the safety of sugars (glucose, fructose, sucrose, and maltose), the Task Force concluded that (Ref. 3):

(1) Evidence exists that sugars, as they are consumed in the American diet, contribute to the development of dental caries.

(2) Other than the contribution to dental caries, there is no conclusive evidence in the available information on sugars that demonstrates a hazard to the general public when sugars are consumed at the levels that are now currnet and in the manner now practiced.

The agency evaluated the safety issues related to sweetener consumption raised in the Select Committee's reports on sucrose and on corn sugar, corn syrup, and invert sugar and in the Task Force report. In particular, it considered the issue of the association between consumption of these sweeteners (or sugars) and the incidence of dental caries.

The agency recognized that the Task Force's conclusions regarding dental caries reinforce the Select Committee's conclusions and establish more definitely the association between sugars consumption and dental caries incidence. Yet, the agency decided to affirm the GRAS status of the use of sucrose, corn sugar, corn syrup, and invert sugar, despite their contribution to dental caries formation. The agency concluded that while the Task Force's findings on dental caries supported the Select Committee's findings, the Task Force's findings did not show that the association between sugars consumption and dental caries had become a more significant health problem than it had been in 1976. The Task Force report showed that total exposure to sweeteners had not changed since the Select Committee's report. Moreover, it showed that caries incidence in the United States had declined in the past decade. The data reviewed in the Task Force report suggest that further developments in caries prevention should facilitate this decline in the future.

For these reasons, the agency has concluded that the Task Force's review did not provide any basis for modifying the 1982 proposed GRAS affirmation of corn sugar, corn syrup, invert sugar, and sucrose.

3. Effects of Increased Consumption of Fructose

The major change in sugars consumption that has occurred as a result of the introduction of high fructose corn syrup containing approximately equimolar amounts of glucose and fructose is the increased consumption of glucose and fructose as monosaccharides as opposed to their consumption as the disaccharide sucrose.

The agency has no significant safety concern about the increase in glucose consumption and would be concerned only if this increase was so great as to cause a nutritional imbalance. Glucose is a normal body nutrient and is the main source of energy for living organisms, including humans. Glucose in a polymeric form (starch) is a normal macronutrient in the human diet.

Fructose, however, does not occupy a similar place in the human diet and metabolism. Before the introduction of high fructose corn syrup, the major sources of added dietary fructose were sucrose and honey. Thus, the major question that must be answered in a safety evaluation of high fructose corn syrup is the effect of consumption of high fructose corn syrup on total fructose consumption.

The Task Force considered current levels of fructose intake, the trend in high fructose corn syrup intake, and the health problems that are associated with the current and the anticipated levels of fructose intake.

As part of its safety assessment of fructose, the Task Force estimated the level of consumption of this sugar in 1984 (Ref. 3). It found that the average daily intake of added fructose was 10 grams per day, and that the 90th percentile average daily intake of added fructose was 23 grams per day. The Task Force in its safety evaluation of fructose found that these intake levels are safe (except for contributing to dental caries) based on safety data reviewed for its report (Ref. 3).

The Task Force assessed the changes in availability of fructose added to food. Based on the evaluation of USDA disappearance data, the Task Force found that the availability of high fructose corn syrup increased since

1970. This increase in the high fructose corn syrup usage has resulted in an increase in the availability of fructose added to the food supply. However, the true increase in fructose availability is smaller than that which appears from the increase in the high fructose corn syrup usage because two thirds of the high fructose usage replaced the sucrose usage in soft drinks, and most of the sucrose in soft drinks exists as glucose and fructose (invert sugar), not as sucrose. Thus, part of the increase in fructose availability acutally replaced the fructose that was already existing in the food supply (Ref. 3). Further, the increase in the high fructose corn syrup usage has been accompanied by a comparable decline in the availability of sucrose. Because sucrose splits into glucose and fructose before absorption for use by the body, the total body load of fructose has not changed much due to use of high fructose corn syrup as currently practiced.

C. Conclusions on the GRAS Status of High Fructose Corn Syrup

Based on the findings of the safety reviews of both the Select Committee and the Task Force, the agency finds that evidence exists that high fructose corn syrup, as it is consumed in the average American diet, contributes to the formation of dental caries.

The agency also finds that there is no convincing evidence in the available information on high fructose corn syrup that demonstrates a hazard to the public, other than dental caries, when high fructose corn syrup is consumed at the levels that are now current and in the manner now practiced.

This conclusion is based on the following:

(1) Data in the Task Force report that show that use of high fructose corn syrup has not resulted in an increase in the consumption of total sugars in the United States as a result of the substitution of high fructose corn syrup for other sweeteners, primarily sucrose.

(2) The safety of the monosaccharides (i.e., glucose and fructose) in high fructose corn syrup (containing equimolar amounts of glucose and fructose) is comparable to the safety of sugars in invert sugar. It is also related to the safety of sucrose. Consumption of all three sweeteners results in the absorption and metabolism of glucose and fructose in an approximately equimolar ratio. Thus, consumption of high fructose corn syrup (containing equimolar amounts of glucose and fructose) is not expected to alter the identity, level, or ratio of monosaccharides that are available for absorption and metabolism from the food supply.

(3) Insoluable glucose isomerase enzyme preparations used in the manufacture of high fructose corn syrup arre GRAS (§ 184.1372) (48 FR 5716; February 8, 1983).

(4) The safety of the minor components (e.g., the higher saccharides and other residues from corn and corn processing) of high fractose corn syrup is comparable to the safety of these components in corn sugar and corn syrup (which have been affirmed as GRAS for use in food). These marterials are present in the original corn syrup used to make high fructose corn syrup and their presence and concentration (gram per gram dry weight) are not altered by the high fructose corn syrup manufacturing process.

Based on these findings, the agency tentatively concludes that it can affirm that the high fructose corn syrup described in 21 CFR 182.1866 is generally recognized as safe as a direct human food ingredient.

In reaching this tentative conclusion, the agency notes that its proposed GRAS affirmation of high fructose corn syrup does not cover a major commerical product that is 55 percent (dry weight) fructose, HFCS–55. The petitions on which the GRAS affirmation of high fructose corn syrup is based did not include HFCS–55. However, the agency is aware of the product, and that the manufacture of HFCS–55 includes processing procedures and materials that are not used to prepare the 43 percent fructose HFCS (HFCS–43) that is the subject of this action. The agency has no information on which to assess the identity and possible residue levels of these processing materials in the HFCS–55 final product. Therefore, the agency cannot adequately assess the safety of that product.

The agency's exposure estimate for high fructose corn syrup did, however, include exposure to HFCS–55. Furthermore, the agency concedes that most of the components found in HFCS–43 (approximately equimolar mixtures of glucose and fructose, residues from corn syrup, and residues from the enzyme preparations used to make high fructose corn syrup) are also found in HFCS–55. Therefore, the safety evaluation of the major components in HFCS–43 is also applicable to HFCS–55. Accordingly, the agency would consider including HFCS–55 in its final rule affirming the GRAS status of high fructose corn syrup if it receives, as comments on this proposal, adequate information on how HFCS–55 is manufactured to allow the agency to identify possible residues from processing materials and thereby to ensure that the levels of those residues in the final product are safe.

The proposed GRAS affirmation of high fructose corn syrup also does not include the 90 percent fructose HFCS (HFCS–90), which is also a commercially available product. This product contains a substantially different ratio of glucose to fructose than either HFCS–43 or HFCS–55. HFCS–90 is not included in this rulemaking because the agency does not have adequate information on the processing materials used to make this ingredient to assess the safety of residual levels of the processing materials in the final product. Furthermore, FDA did not inlcude HFCS–90 in the agency's exposure estimate for high fructose corn syrup. The agency is aware of only minor uses of HFCS–90 as an ingredient in low calorie foods. Finally, the agency's safety review of the sugars components of high fructose corn syrup does not cover this product because HFCS–90 does not contain approximately equimolar amounts of glucose and fructose. Thus, additional data on the effects of fructose consumption that is not balanced with glucose consumption would be needed to assure the safety of this product. The agency concludes that appropriate consideration of GRAS status of this product would be through the petition process (21 CFR 170.35).

D. Conditions of GRAS Affirmation

The agency is proposing to affirm the GRAS status of high fructose corn syrup in accordance with 21 CFR 184.1(b)(1). The proposed GRAS affirmation regulation is based on the conclusions of the Select Committee's report and Task Force report on sweeteners.

The agency's conclusion on the use of high fructose corn syrup is based, in large part, on the agency's conclusions on the safety of total sweetener consumption. The agency's conclusion that such consumption is GRAS is predicated on the assumption that the consumption and availability of total sugars will remain at current levels.

Usually when the safety of possible expanded consumption of a substance cannot be ascertained, FDA proposes to establish specific limitations on use of the substance. For corn sugar, corn syrup, invert sugar, and sucrose, however, the agency concluded that limitation on their use would not effectively prevent an increase in total dietary sugars consumption for the following reasons:

(1) The concern of the Select Committee (and of the Task Force) relative to sweetener consumption and

adverse affects was for total sweetener consumption.

(2) The use of these sweeteners is extremely variable within each of the 43 food categories listed in § 170.3(n). Thus, even if the agency were to adopt maximum use levels, it would not prevent manufacturers from increasing the amount of these sweeteners in a particular product in a food category to the level established by the limitation.

(3) Establishment of specific limitations for these sweeteners would not prevent the excessive consumption of these ingredients or other dietary sugars that results from voluntary selection of those foods that have a high sugars content.

For these reasons, the proposed regulations on sucrose, corn sugar, corn syrup, and invert sugar specify that the ingredients are used in food with no limitation other than current good manufacturing practice in accordance with § 184.1(b)(1) (see 47 FR 53917 and 53923; November 30, 1982).

For similar reasons, FDA is proposing to not establish limitations on the use of high fructose corn syrup in food. Given the safety conclusions of both the Select Committee and the Task Force regarding total sweetener consumption, the finding of the Task Force that the level of total sweetener consumption has not changed, and the interchangeability of sweetener use, the agency tentatively concludes that there is no basis for establishing conditions of use for high fructose corn syrup that are different from those established for the other sweeteners. Therefore, the agency is proposing to affirm the GRAS status for the use of high fructose corn syrup in food with no limitation other than current good manufacturing practice. The agency also proposes to amend 21 CFR 184.1372 *Insoluable glucose isomerase enzyme preparations* by removing the Part 182 citation for high fructose corn syrup (21 CFR 182.1866) and replacing this citation with the new Part 184 citation (21 CFR 184.1866).

Food-grade specifications do not exist for high fructose corn syrup at the present time. The agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. When acceptable specifications are developed, the agency will incorporate them into this regulation. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial high fructose corn syrup complies with the description in the proposed regulation and is of food-grade purity in accordance with 21 CFR 170.30(h)(1) and 182.1(b)(3).

III. Impact Analysis

The agency has determined under 21 CFR 25.24(b)(7) 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, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch.

IV. Comments

Interested persons may, on or before January 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Cron Syrup, and Invert Sugar as Food Ingredients" (SCOGS–50), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

2. "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" (SCOGS–69), Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976.

3. Glinsmann, W. H., Irausquin, H. and Park, Y. K. "Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Report of Sugars Task Force, 1986, *Journal of Nutrition*, 116 (115):51–5216, 1986.

4. Kirk-Othmer Encyclopedia of Chemical Technology, 3d Ed., Vol. 22, p. 510.

List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.1866 [Removed]

2. Section 182.1866 *High fructose corn syrup* is removed from Subpart B.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

4. Section 184.1372 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 184.1372 Insoluable glucose isomerase enzyme preparations.

(a) Insoluable glucose isomerase enzyme preparations are used in the production of high fructose corn syrup as described in § 184.1866 of this chapter. * * *

* * * * *

5. Section 184.1866 is added to Subpart B to read as follows:

§ 184.1866 High fructose corn syrup.

(a) High fructose corn syrup is a sweet, nutritive saccharide mixture containing approximately 52 percent

(dry weight) glucose, 43 percent (dry weight) fructose, and 5 percent (dry weight) other saccharides. It is prepared as a clear aqueous solution from high dextrose equivalent corn starch hydrolysate by partial enzymatic conversion of glucose (dextrose) to fructose utilizing an insoluble glucose isomerase enzyme preparation described in § 184.1372.

(b) FDA is developing food-grade specifications for high fructose corn syrup in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

Dated: October 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25584 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Application of the Medicare Economic Index

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Part 199 of Title 32, the regulation which governs CHAMPUS, by implementing Section 8019 of the Department of Defense Appropriation Act for 1989, Pub. L. 100-463. This section limits increases in the CHAMPUS prevailing charges for physician and other authorized individual providers of medical care to the extent justified by economic changes as reflected in appropriate economic index data similar to that used under Medicare. The amended 32 CFR Part 199 would employ the Medicare Economic Index to limit the increases in prevailing charges.

DATE: Written public comments must be received on or before December 7, 1988.

ADDRESS: Send comments to the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Office of Program Development, OCHAMPUS, telephone (303) 361-3587.

To obtain copies of this document, see the *"ADDRESS"* section above.

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

I. Background

Currently, for the services of physicians and other authorized individual professional providers, the regulation provides that the allowable charge for covered care shall be the lower of: (1) The billed charge for the service; or (2) the prevailing charge level that does not exceed the amount equivalent to the 60th percentile of billed charges made for similar services in the same locality during the base period. Section 8019 of the Department of Defense Appropriation Act for Fiscal Year 1989, Pub. L. 100-463, requires that

> None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions for section 1079(a) of title 10, United States Code, shall be available for reimbursement of any physician or other authorized individual provider of medical care in excess of the lower of: (a) the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079(h) of title 10, United States Code; or (b) the allowable amounts in effect during fiscal year 1988 increased to the extent justified by economic changes as reflected in appropriate economic index data similar to that used pursuant to title XVIII of the Social Security Act.

Accordingly, beginning approximately January 1, 1989, increases in the CHAMPUS prevailing charges in effect during fiscal year 1988 for physicians and other authorized individual providers will be limited based on application of the Medicare Economic Index (MEI).

On September 29, 1988, we published in the **Federal Register** (53 FR 38050) a notice to defer update of CHAMPUS prevailing charge levels for professional services originally to be effective October 1, 1988. This notice specified that the deferral of the update will last for 12 months unless CHAMPUS implements the MEI method to limit growth in prevailing charges.

Effective approximately January 1, 1989, this proposed rule will implement the provisions of Pub. L. 100-463, adopting the MEI under CHAMPUS and lifting the freeze on prevailing charge levels. With the adoption of the MEI, the CHAMPUS fee screen year (the 12 month period beginning on the date the profiles are updated) will also be changed from a fiscal year to a calendar year.

II. Medicare Economic Index (MEI)

In 1972, in response to concerns about rising physician fees reimbursed under Part B of the Medicare program, Congress mandated that an additional fee limit be included in the calculation of "reasonable" charges. Under Section 224 of the Social Security Act Amendments of 1972 (Pub. L. 92-603), the prevailing charge—an amount equal to the maximum reasonable charge allowed physicians for a specific procedure in a specific locality—could exceed the July 1972-June 1973 prevailing charge only by an amount reflected by an index of changes in physicians' operating expenses and earnings levels. This index is known as the Medicare Economic Index (MEI). Under Medicare, in the case of physicians' services only, annual increases in prevailing charges are provided to account for inflation, but only to the extent that there are updates in the MEI. The MEI updates have progressively increased the initial prevailing charge level that was established for the (then) fiscal year ending June 30, 1973.

The Omnibus Budget Reconciliation Act of 1987 established the MEI for 1989 at 3.0 percent for primary care services and 1.0 percent for other services. Primary care services were defined in the accompanying Conference Report to be office medical visits, home medical visits, emergency department services, and skilled nursing, intermediate care, long-term care facility, nursing home, boarding home, domiciliary or custodial care visits.

CHAMPUS will be following the Medicare procedure in this regard, subject to changes based on differences in the CHAMPUS and Medicare programs. Under CHAMPUS, we

propose that the primary care MEI be applied to all maternity care and delivery procedure codes (CPT–4 codes 59000–59899) and well-baby care (CPT–4 codes 90701–90749, 90753–90757, 90763–90764, 54150, and 54160). Our proposed limited deviation from Medicare's procedure is based on the idea that maternity care and delivery services and well baby care services, which are of little relevance to Medicare, are analogous to the Medicare concept of primary care services.

Medicare makes a variety of adjustments to the MEI in order to accommodate various payment policies not relevant for CHAMPUS. For example, physicians who agree to accept assignment on all Medicare claims for the forthcoming year are known as participating physicians. The prevailing charge limit for nonparticipating physicians is set at a portion of that for participating physicians. Nonparticipating physicians are also subject to a limit on their actual charges. CHAMPUS does not distinguish between participating and nonparticipating physicians for payment amount purposes.

Medicare also provides incentive payments for primary care physicians in underserved rural areas, reduces payments for specified procedures, and makes other adjustments as well. These do not apply to CHAMPUS.

III. Application of the MEI under CHAMPUS.

Currently, the CHAMPUS annual base collection period covers the July 1 through June 30 period as does the Medicare period. However, the CHAMPUS fee screen year currently begins on October 1 while the Medicare fee screen year starts on January 1. With the application of the MEI beginning January 1, 1989, the base collection period will remain the same. However, the CHAMPUS fee screen year will be changed from fiscal year to calendar year for 1989 and subsequent years. This will provide conformity with the Medicare procedures and assurance that future year MEI amounts will be available when needed for the CHAMPUS update.

Consistent with Medicare, CHAMPUS will allow accumulation of the annual MEI increases. If the actual increase in a prevailing charge is less than the indexed amount for that charge, the portion of the indexed amount not used will be carried forward as the basis for justifying increases in that charge in future years. For example, if the indexed amount for a given procedure is $100 but the actual prevailing charge calculated for that procedure is $95, the lower amount ($95) shall be used for payment during that fee screen year. The calculated indexed amount ($100) will be retained by the CHAMPUS fiscal intermediary (FI), however, and the following year, the new MEI percentage would be applied to the previous year's indexed amount ($100) even though it was not used for payment purposes. In essence, this will allow the full advantage of the MEI increases to accumulate yearly. Medicare has been doing this since inception of the MEI.

Essentially, CHAMPUS will modify its method of annual updating prevailing charges for individual professional provider services. In addition to its present method of developing prevailing charges from all charges made by providers during a 12-month base period, CHAMPUS will determine what the prevailing charge would be using the MEI. The CHAMPUS allowable charge would then be the lowest of: (1) The billed charge for the service; (2) the prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or (3) the fiscal year 1988 prevailing charge adjusted by the MEI.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated with the Department of Defense, with the Department of Health and Human Services, the Department of Transportation and with other interested agencies, so that consideration of both internal and external comments and publication of the final rulemaking document can be expedited. Regulatory Procedures.

Executive Order 12291 requires that a regulatory impact analyses be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other significant economic impacts.

The Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

The changes set forth in this proposed rule, taken as a whole, would have an annual impact on the professional provider community of substantially less than $100 million. The proposed modification in the professional provider payment mechanism is expected to result in government cost savings of only $25 million in 1989.

It is hereby certified that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, it is not a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

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

Authority: 10 U.S.C. 1079, 1096, 5 U.S.C. 301.

§ 199.14 [Amended]

2. Section 199.14 is amended by revising paragraph (g)(1)(i) introductory text and (A), and adding (g)(1)(i)(c) to read as follows):

(g) * * *

(1) * * *

(i) The allowable charge for authorized care shall be the lowest of the amounts identified in paragraphs (g)(1) (A), (B), and (C) of this section.

(A) The billed charge for the service.

(B) * * *

(C) For charges from physicians and other individual professional providers, the fiscal year 1988 prevailing charges adjusted by the Medicare Economic Index (MEI), as the MEI is applied to Medicare prevailing charge levels.

(*1*) In any year in which the Medicare program applies a different MEI to primary care services, CHAMPUS will include maternity care and delivery services and well baby care services as primary care for the purposes of applying the MEI.

(*2*) The Director, OCHAMPUS, shall issue procedural instructions to apply the MEI under CHAMPUS.

* * * * *

October 28, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–25366 Filed 11–4–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3472-3]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of a technical amendment to the state-wide sulfur dioxide emission limit as a revision to the Washington state implementation plan (SIP). This amendment clarifies the averaging time for the state sulfur dioxide emission limit in WAC 173–400–040(6). EPA is also proposing to rescind two exception provisions to the sulfur dioxide emission limit (WAC 173–400–040(6)(a) (i) and (ii)) from the currently-approved Washington SIP. This revision was submitted on April 28, 1983, by the Washington Department of Ecology to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act).

DATE: Comments must be postmarked on or before December 7, 1988.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–88–4), Environmental Protection Agency, 1200 Sixth Avenue AT–082 Seattle, Washington 98101.

State of Washington, Department of Ecology 4224–6th Avenue SE. Rowe Six, Building No. 4, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1979, the State of Washington Department of Ecology (WDOC) submitted a state-wide emission limitation for sulfur dioxide as a revision to the Washington SIP. On June 5, 1980 (45 FR 37821), EPA approved this emission limit on the condition that WDOE submit source test and compliance procedures for enforcing the emission limit. On July 31, 1980, and January 13, 1981, WDOE submitted source test methods and compliance procedures as revisions to the Washington SIP. EPA approved these revisions to the Washington SIP on September 14, 1981 (46 FR 45607).

On April 28, 1983, WDOE submitted a technical amendment to the sulfur dioxide emission limit as a revision to the Washington SIP. This technical amendment clarified the averaging time for the sulfur dioxide emission limit.

II. Discussion

The 1981 version of the Washington sulfur dioxide emission limit did not specify an averaging time as part of the regulation itself (WAC 173–400–040(6)). However, Section III–D "Description of the Source Test Program for the State Implementation Plan" of the "Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act," set forth the source test methods, minimum sample durations and minimum number of samples to be used for compliance determinations. In accordance with this section, compliance with the sulfur dioxide emission limit was to be determined by a minimum of three Method 6 source samples, each with a minimum sample duration of 15 minutes or one process cycle, whichever was greater.

Because the SIP specified minimum sample durations and minimum number of samples, uncertainties arose with respect to the actual averaging time to be used for compliance with the sulfur dioxide emission limit. In 1983, WDOE decided to clarify the averaging time for the sulfur dioxide emission limit by specifically including it in the regulation. WAC 173–400–040(6) was amended to specify that compliance was based on the average of any period of sixty consecutive minutes. WDOE submitted the amended sulfur dioxide emission limit to EPA as a revision to the Washington SIP on April 28, 1983.

EPA has determined that this 60-minute average is functionally equivalent and as stringent as the current compliance methodology. Furthermore, it is a better approach from both a legal and practicable standpoint since the averaging time is specified in the regulation itself rather than elsewhere in the Washington SIP. EPA, therefore, is proposing to approve this amendment to the sulfur dioxide emission limit as a revision to the Washington SIP.

The April 28, 1983, amendments to the sulfur dioxide emission limit also included changes to the two exception provisions which EPA approved on June 5, 1980, and September 14, 1981. Because these exemption provisions are inconsistent with section 110(i) of the Act, EPA is proposing to take no action on the changes in the April 28, 1983, submittal and to rescind the current exception provisions from the Washington SIP.

Section 110(i) of the Act clearly states that, with certain exceptions, only revisions submitted to, and approved by, the EPA Administrator can change an applicable requirement of a SIP. When EPA approved the two exemption provisions in the WDOE sulfur dioxide emission limit it specifically stated that "Any specific action taken by a State official, even if authorized under procedures approved by EPA, shall not modify the Federally approved SIP unless submitted to and approved by EPA as a separate revision to the SIP * * *. Thus, while EPA may approve the procedures a State employs to modify the SIP, it does not thereby approve individual actions which may be taken under thse procedures." (45 FR 37835, June 5, 1980).

Since there is no requirement for the SIP to contain exception provisions, but rather, any exception must be submitted as an individual SIP revision, EPA is proposing to take no action on the amendments to the two sulfur dioxide exception provisions in WAC 173–400–040(6). In addition, since the current exception provisions are not consistent with the Act's requirements for an approvable SIP revision since they do not address the requirements for prevention of significant deterioration or visibility protection, EPA is hereby proposing to rescind its previous approval of these exception provisions (WAC 173–400–040(6)(a) (i) and (ii)).

III. Summary of Action

In summary, EPA is proposing to approve WAC 173–400–040(6), except paragraphs (a) and (b), as a revision to the Washington SIP. EPA is also proposing to rescind the pre-existing exception provisions (WAC 173–400–040(6)(a) (i) and (ii)) from the Washington SIP.

Interested parties are invited to comment on all aspects of this proposed appoval and rescission. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by December 7, 1988, will be considered in the final rulemaking action take by EPA.

III. Administrative Review

The Ofice of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Rule 12291.

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

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particualte matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: August 8, 1988.

Robi G. Russell,

Regional Administrator.

[FR Doc. 88–25691 Filed 11–4–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL 3443–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 CFR 81.350, for a sub-city area in the City of Racine, Racine County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). The intent of this notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment on it and USEPA's proposed action. Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to an attainment status.

USEPA is proposing to disapprove Wisconsin's redesignation request because the WDNR failed to provide any evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and resulted in the decrease in ambient concentrations, and (3) disperson techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Desigantion Policy Summary" from Sheldon Meyers, then Director, Officer of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 7, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993, October 5, 1978, and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Racine, Wisconsin, was designated as not attaining the TSP standard. On July 23, 1987, pursuant section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Racine [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP SIP was required which satisfied the requirements of section 110(a) and Part D of the CAA which involved providing for attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) described USEPA's transition policy regarding TSP redesignations.

According to USEPA's transition policy, TSP redesignation requests will be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985.

USEPA's specific criteria for TSP redesignatons, as identified in these policies, and USEPA's analysis of Wisconsin's request under these criteria are as follows:

Criterion 1

Violation-free Monitoring Data

Eight consecutive quarters of the most recent representative air quality data must reveal no violations of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR submitted three years of violation-free data for four sites in Racine and two years of data from an additional two sites in Racine. However, the WDNR failed to address the representativess of the monitoring network at expected maximum TSP impact sites. At a minimum, the WDNR should have provided a map showing both emission sources and monitor locations. If monitors are not at worst-case locations, dispersion modeling should have been used to support the redesignation.

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[1] The Racine sub-city nonattainment area is defined as follows:

North: Douglas Avenue north from Marquette St. To Rapids Drive, northwest on Rapids Drive to intersection with Forest St. west to intersection with west boundary.

West: North from corner of Grange Avenue and Washington Avenue north to Freres Avenue north to intersection with north boundary.

South: Washington Avenue west from Grange Avenue to Marquette Street.

East: Marquette street north from Washington Avenue to Douglas Avenue.

Criterion 2

Implementation of USEPA-approved Control Strategy

The USEPA-approved control strategy (i.e., Wisconsin State Implementation Plan (SIP)) must have been implemented. The improvement in monitored readings for TSP (since the base year used for the nonattainment designation) must be attributable to enforceable or permanent emission reduction implemented since that year.

WDNR failed to provide any reason for the air quality improvement. The WDNR should have discussed the reasons for the original secondary nonattainment designation; the control strategies implemented which resulted in cleaner air; the federal enforceability of the control strategies; and the complete implementation of the SIP (i.e., no sources out of compliance).

Criterion 3

Permanent Emission Reductions

Emission reductions and improvement in air quality must not be temporary or merely the result of economic downturn. It must be shown that it is highly unlikely that emission rates will increase significantly at any units operating below their allowable emission rates (e.g., because economic, technological or regulatory factors would prevent such increases). There must also be a showing that it is unlikely that production levels will increase significantly.

WDNR failed to disuss how the air quality standards will be maintained in the future. At a minimum, WDNR should have provided historical operating rates and historical actual emissions and discussed why emission increases are unlikely. Current allowable emissions should also have been provided. It sources are emitting at levels significantly below their allowable limits, then a modeled attainment demonstration would be required to demonstrate attainment if sources were to emit at allowable levels in the future. For any permanent source shutdowns, WDNR should have documented that, if such a source were to start up in the future, the source would be required to undergo new source review (NSR) procedures.

Criterion 4

Dispersion Techniques

Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 27892), cannot be responsible for the improvement in air quality.

WDNR failed to address dispersion techniques. WDNR should have reviewed all TSP sources and documented that dispersion techniques were not responsible for the improvement in air quality.

Conclusion

WSEPA proposes to disapprove the redesignation request for a sub-city nonattainment area of Racine, Wisconsin, because the WDNR did not document the reasons for air quality improvement in Racine; nor did it document, or make a finding, as to whether current air quality will be maintained.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), I certify that this proposed disapproval of Wisconsin's redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Racine, Wisconsin, and imposes no new requirements on anyone.

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: December 16, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register November 2, 1988.

[FR Doc. 88–25690 Filed 11–4–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the Health Education Assistance Loan (HEAL) program to identify those allied health disciplines that are eligible for participation in the HEAL-program, in accordance with amendments made to the Public Health Service Act (the Act) by the Health Professions Training Assistance Act of 1985.

DATE: As discussed below, comments are invited. To be considered, comments must be received by January 6, 1989.

ADDRESSES: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–4540.

SUPPLEMENTARY INFORMATION: The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129) amended the HEAL statute to include graduate students in schools of allied health as eligible for HEAL loans. To implement this statutory change, the Secretary is proposing in these regulations to specify the allied health disciplines that would qualify for participation in the HEAL program.

Interested persons are invited to submit written comments on these proposed revisions to the HEAL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are summarized below according to the Subparts, section numbers, and headings of the HEAL regulations affected.

Subpart A—General Program Description

Section 60.1 What is the HEAL program?

The Department is proposing to revise paragraph (a) of this section to state that master's and doctoral level students in

the allied health disciplines listed in § 60.5(b) are eligible for HEAL loans.

Subpart B—The Borrower

Section 60.5 Who is an eligible student borrower?

The Department is proposing to revise paragraph (b) of this section to list the allied health programs in which a student borrower must be enrolled or accepted for enrollment to be eligible to receive HEAL funds. The allied health fields proposed for eligibility are audiology, occupational therapy, physical therapy, physician assistant, and speech-language pathology. An explanation of how the Department determined which allied health disciplines would be eligible for participation in the HEAL program is provided below under § 60.50.

Subpart C—The Loan

Section 60.11 Terms of repayment.

The Department is proposing to revise paragraph (a)(2) to include the approved accrediting agencies for allied health internship or residency programs. This is necessary to determine whether activities engaged in by eligible allied health borrowers qualify for deferment.

Subpart E—The School

Section 60.50 Which schools are eligible to be HEAL schools?

The Department is proposing to redesignate existing paragraph (a)(1) of this section as paragraph (a)(1)(i), and revise this paragraph to state that schools offering degrees in medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, health administration, and clinical psychology are not considered schools of allied health. This is consistent with the Act, which defines "allied health professionals" as excluding individuals who have received a degree in any of these disciplines.

A new proposed paragraph (a)(1)(ii) is also being added to this section which would require that, to qualify for participation in the HEAL program, a school of allied health must be a program in a public or nonprofit private college or university which: (1) Provides a program of education in an allied health discipline eligible to participate in the HEAL program leading to a master's or doctoral degree; (2) provides training for not less than a total of 20 persons in the graduate allied health discipline eligible to participate in the HEAL program; (3) includes or is affiliated with a teaching hospital; and (4) is legally authorized within a State to conduct a course of study leading to a master's or doctoral degree in audiology, occupational therapy, physical therapy, physician assistant, or speech-language pathology.

The first three criteria reflect the definitions of "school of allied health" set forth in sections 737(4) and 701(10) of the Act. Section 701(13) of the Act further defines an "allied health professional" as an individual who: (1) Has received a degree in a science related to health care; (2) shares in the responsibility for the delivery of health care services or related services; and (3) has not received a degree in a discipline already eligible to participate in the HEAL program. As defined in the Act, neither "school of allied health" nor "allied health professional" identifies specific health disciplines that qualify as allied health. However, § 60.50(a)(2)(i) of the existing HEAL regulations requires that a HEAL school must be accredited by a recognized agency approved for that course of study by the Secretary of Education. Accordingly, the fourth criterion identifies those allied health disciplines with master's or doctoral programs which are accredited by approved specialized accrediting agencies and thus have the ability to meet the accreditation requirements of the HEAL program.

Paragraph (a)(2)(ii) is also proposed to be amended by adding those accrediting agencies which are approved for the eligible allied health disciplines.

In addition to the changes proposed above for this section, this NPRM would revise the term "State" by inserting after the "Trust Territory of the Pacific Islands" those entities, for purposes of this loan program, which are viewed as a State—the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia—in accordance with Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping, reporting, or disclosure/notification requirements for the HEAL program.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

Dated: September 23, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 19, 1988.

Otis R. Bowen,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.108, Health Education Assistance Loan Program)

Accordingly, 42 CFR Part 60 is proposed to be revised as follows:

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR Part 60 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 State. 529–532 (42 U.S.C. 294–294*l*).

2. Section 60.1, in Subpart A is amended by revising paragraph (a) to read as follows:

Subpart A—General Program Description

§ 60.1 What is the HEAL program?

(a) The Health Education Assistance Loan (HEAL) program is a program of Federal insurance of educational loans to graduate students in the fields of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, health administration, clinical psychology, and the allied health disciplines listed in § 60.5(b). The purpose of the program is to encourage lenders to make loans to students in these fields who desire to borrow money to pay for their educational costs. In addition, certain nonstudents (such as physicians serving as interns or residents) can borrow to pay the current interest charges accruing on previous HEAL loans. By taking a

HEAL loan, the borrower is obligated to repay the lender the full amount of the money borrowed, plus all interest which accrues on the loan.

* * * * *

3. Section 60.5, in Subpart B is amended by revising paragraph (b) to read as follows:

Subpart B—The Borrower

§ 60.5 Who is an eligible student borrower?

* * * * *

(b) He or she must be enrolled or accepted for enrollment at a HEAL school in a course of study that leads to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathic Medicine.
Doctor of Dentistry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Podiatric Medicine or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Graduate or equivalent degree in Public Health.
Doctor of Chiropractic or equivalent degree.
Doctoral degree of Clinical Psychology or equivalent degree.
Master's or doctoral degree in Health Administration.
Master's or doctoral degree in Audiology.
Master's or doctoral degree in Occupational Therapy.
Master's or doctoral degree in Physical Therapy.
Master's or doctoral degree in Physician Assistant.
Master's or doctoral degree in Speech-Language Pathology.

* * * * *

4. Section 60.11, in Subpart C is amended by adding paragraphs (a)(2)(x), (xi), and (xii) to read as follows:

Subpart C—The Loan

§ 60.11 Terms of repayment.

(a) * * *

(2) * * *

(x) Council on Professional Standards in Speech-Language Pathology and Audiology.

(xi) Committee on Allied Health Education and Accreditation (for occupational therapy and physician assistant).

(xii) Commission of Accreditation in Education of the American Physical Therapy Association.

* * * * *

(5) Section 60.50, in Subpart E is amended by revising paragraph (a)(1), and by adding paragraphs (a)(2)(ii)(L), (M), and (N) to read as follows:

Subpart E—The School

§ 60.50 Which schools are eligible to be HEAL schools?

(a) * * *

(1)(i) If the school is not an allied health school, the school must be legally authorized within a State to conduct a course of study leading to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathic Medicine.
Doctor of Dentistry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Podiatric Medicine or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Graduate or equivalent degree in Public Health.
Doctor of Chiropractic or equivalent degree.
Doctoral degree of Clinical Psychology or equivalent degree.
Master's or doctoral degree in Health Administration.

(ii) If the school is an allied health school, it must be a program in a public or nonprofit private college or university which:

(A) Provides a program of education in an allied health discipline eligible to participate in the HEAL program leading to a master's or doctoral degree;

(B) Provides training for not less than a total of 20 persons in the graduate allied health discipline eligible to participate in the HEAL program;

(C) Includes or is affiliated with a teaching hospital; and

(D) Is legally authorized within a State to conduct a course of study leading to one of the following degrees:

Master's or doctoral degree in Audiology.
Master's or doctoral degree in Occupational Therapy.
Master's or doctoral degree in Physical Therapy.
Master's or doctoral degree in Physician Assistant.
Master's or doctoral degree in Speech-Language Pathology.

(iii) For purposes of this section, the term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

(2) * * *

(ii) * * *

(L) Council on Professional Standards in Speech-Language Pathology and Audiology.

(M) Committee on Allied Health Education and Accreditation (for occupational therapy and physician assistant).

(N) Commission of Accreditation in Education of the American Physical Therapy Association.

* * * * *

[FR Doc. 88-25697 Filed 11-4-88; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6941]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of

1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

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

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

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
Edgewater (town), Jefferson County	
Upper Sloans Lake Basin Drainageway:	
Approximately 1,515 feet downstream of the intersection of West 20th Avenue and Ingalls Street	*5333
Approximately 80 feet downstream of the intersection of West 20th Avenue and Jay Street	*5351
Approximately 50 feet downstream of West 20th Avenue and Pierce Street	*5384
Approximately 650 feet upstream of Pierce Street	*5409
Maps are available for review at the City Clerk's Office, City Hall, 5845 West 25th Avenue, Edgewater, Colorado. Send comments to The Honorable Keith Daly, Mayor, City of Edgewater, City Hall, 5845 West 25th Avenue, Edgewater, Colorado 80214.	
Gunnison County (unincorporated areas)	
Tomichi Creek:	
At confluence with Gunnison River	*7602
Just upstream of bridge crossing which is located approximately 10,900 feet above the confluence with Gunnison River	*7637
Approximately 14,800 feet upstream of bridge crossing that is located approximately 10,900 feet above the confluence with Gunnison River	*7666
Gunnison River:	
At McCabe Bridge	*7571
Approximately 2,550 feet upstream of Footbridge	*7600
Just upstream of the westbound lane of U.S. Route 50	*7646
At confluence of Antelope Creek	*7682
At confluence of Ohio Creek	*7729
Approximately 50 feet upstream of State Route 135	*7763
North Fork Gunnison River:	
Just upstream of the Delta County Line	*5898
Approximately 4,525 feet downstream of Somerset Bridge	*5955
Approximately 1,570 feet upstream of Somerset Bridge	*6020
Maps are available for review at the Office of County Planning, 200 East Virginia Avenue, Gunnison, Colorado. Send comments to The Honorable David Leinsdorf, Chairman, Gunnison County Board of Commissioners, 200 East Virginia Avenue, Gunnison, Colorado 81230.	
Sedgwick (town), Sedgwick County	
South Platte River:	
Approximately 800 feet upstream of State Highway 59	*3581
Approximately 3,600 feet upstream of State Highway 59	*3585
Maps are available for review at the City Offices, City Hall, 22 McKinstry Avenue, Sedgwick County. Please send comments to The Honorable Robert Saya, Mayor, City of Sedgwick, P.O. Box #27, 22 McKinstry Avenue, Sedgwick, Colorado 80749.	
IDAHO	
Glenns Ferry (city), Elmore County	
Little Canyon Creek:	
Approximately 2,600 feet downstream of Boise Street	*2534
Approximately 225 feet downstream of Boise Street	*2543
Approximately 100 feet downstream of the Union Pacific Railroad Bridge	*2552
Approximately 175 feet upstream of First Avenue	*2560
Approximately 1,200 feet upstream of U.S. Highway 20 & 30	*2562
Maps are available for review at City Hall, 204 E. Second AVenue, Glenns Ferry, Idaho. Send comments to The Honorable Dayle Messerly, Mayor, City of Glenns Ferry, Box 910, Glenns Ferry, Idaho 83623.	
Nexperce (city), Lewis County	
Long Hollow Creek:	
Approximately 1,180 feet downstream of 4th Avenue	*3199
At Fifth Avenue	*3203
Approximately 250 feet upstream of Maple Street	*3208
Maps are available for review at City Hall, 502 Fifth Street, Nezperce, Idaho. Send comments to The Honorable Jerry Elven, Mayor, City of Nezperce, City Hall, 502 Fifth Street, Nezperce, Idaho 83543.	
ILLINOIS	
Sainte Marie (village), Jasper County	
Embarras River:	
About 2.0 miles downstream of County Route 9	*471
About 1300 feet upstream of County Route 9	*474
Maps available for inspection at the Post Office, Sainte Marie, Illinois. Send comments to The Honorable Edward R. Stone, Village President, Village of Sainte, Marie, P.O. Box 57, Sainte Marie, Illinois 62459–0057.	
IOWA	
Williamsburg (city), Iowa County	
Old Mans Creek:	
About 1.2 miles downstream of State Street	*754
About 0.75 miles upstream of Highland Street	*766
Maps available for inspection at City Hall, 210 West State, Williamsburg, Iowa. Send comments to The Honorable Terrence Stone, Mayor, City of Williamsburg, City Hall, 210 West State, Williamsburg, Iowa 52361.	
KANSAS	
Arlington (city), Reno County	
North Fork Ninnescha River:	
About 0.96 mile downstream of Main Street	*1564
Just downstream of State Highway 61	*1573
Just upstream of the St. Louis Southwestern Railway	*1586
Just upstream of Sego Road	*1586
Maps available for inspection at City Offices, Arlington, Kansas. Send comments to The Honorable Donald Moore, Mayor, City of Arlington, P.O. Box 377, Arlington, Kansas 67514	
Pretty Prairie (city), Reno County	
Smoots Creek:	
Just upstream of Pretty Prairie Road	*1562
Just downstream of Dean Road	*1565
Smoots Creek Tributary:	
Just downstream of Main Street	*1568
Just downstream of Pretty Prairie Road	*1562
Maps available for inspection at City Offices, 105 Plum Street, Pretty Prairie, Kansas. Send comments to The Honorable Eric J. Zacharias, Mayor, City of Pretty Prairie, City Offices, 105 Plum Street, Pretty Prairie, Kansas 67570.	
South Hutchinson (city), Reno County	
Arkansas River:	
About 500 feet downstream of Atchison, Topeka, and Santa Fe Railway	*1535
About 900 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1538
Maps available for inspection at City Offices, 2 South Main Street, South Hutchinson, Kansas. Send comments to The Honorable Erwin Leeper, Mayor, City of South Hutchinson, 2 South Main Street, South Hutchinson, Kansas 67505.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Turon (city), Reno County	
Silver Creek Tributary:	
About 1860 feet upstream of Brownlee Road	*1742
About 2450 feet upstream of Brownlee Road	*1745
Maps available for inspection at City Hall, Turon, Kansas. Send comments to The Honorable Vernon Barr, Mayor, City of Turon, City Hall, P.O. Box 366, Turon, Kansas 67583.	
MAINE	
Millinocket (town), Penobscot County	
Millinocket Stream:	
Approximately 150 feet downstream of Granite Street bridge	*346
At upstream corporate limits	*354
Little Smith Brook:	
At confluence with Millinocket Stream	*352
At upstream corporate Limits	*364
Ledge Cut Brook:	
At confluence with Little Smith Brook	*362
At upstream corporate limits	*404
Maps available for inspection at the Planning Department, Town Hall, Millinocket, Maine.	
Send comments to The Honorable William Ayaub, Chairman of the Town of Millinocket Board of Selectment, Penobscot County, P.O. Box 959, Millinocket, Maine 04462.	
MASSACHUSETTS	
Chesterfield (town), Hampshire County	
Westfield River:	
At downstream corporate limits	*610
Approximately 0.53 miles upstream of confluence of Jewel Brook	*897
Maps available for inspection at the Town Selectmen's Office, Town Office Building, Chesterfield, Massachusetts.	
Send comments to The Honorable Arthur Smith, Chairman of the Board of Selectmen, Hampshire County, Town Office Building, P.O. Box 3, Chesterfield, Massachusetts 01012.	
MICHIGAN	
Northport (village), Leelanau County	
Northport Creek:	
At mouth	*584
Just downstream of Pond Street	*593
Just upstream of Pond Street	*598
Just downstream of Third Street	*598
Just upstream of Third Street	*612
About 500 feet upstream of Third Street	*612
Northport Bay: Along shoreline	*584
Maps available for inspection at the Village Hall, 118 West Nagomaba, Northport, Michigan.	
Send comments to The Honorable Edward S. Reinsch, Village President, Village of Northport, Village Hall, Box 336, 118 West Nagomaba, Northport, Michigan 49670.	
Scio (township), Washtenaw County	
Honey Creek:	
At mouth	*808
About 0.85 mile upstream of Liberty Road	*903
Honey Creek Tributary 1:	
At mouth	*852
About 550 feet upstream of Jackson Road	*867
Honey Creek Tributary 2:	
At mouth	*862
About 200 feet downstream of Private Drive	*876
Honey Creek Tributary 3:	
At mouth	*876
About 2,170 feet upstream of Honey Run Drive	*890
Maps available for inspection at the Township Hall, 827 North Zeeb, Ann Arbor, Michigan.	
Send comments to The Honorable Richard A. DeLong, Supervisor, Township of Scio, Township Hall, 827 North Zeeb, Ann Arbor, Michigan 48103.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MONTANA	
Hamilton (city), Ravalli County	
Bitterroot River:	
Just upstream of U.S. Route 93	*3,514
Approximately 4,950 feet downstream of West Bridge Road	*3,531
At the Cornwalus Canal headgate located approximately 1,750 feet downstream of West Bridge Road	*3,540
Approximately 4,250 feet upstream of West Bridge Road	*3,558
Maps available for review at the Hamilton City Office, City Hall, 175 South 3rd Street, Hamilton, Montana.	
Send comments to The Honorable James Whitlock, Mayor, City of Hamilton, 175 South 3rd Street, Hamilton, Montana 59840.	
NEW HAMPSHIRE	
Gilford (town), Belknap County	
Gunstock Brook:	
At upstream side of State Route 11B	*506
Approximately 2,050 feet upstream of Alvah Wilson Road	*749
Gunstock Brook Tributary:	
At confluence with Gunstock Brook	*516
Approximately 175 feet upstream of State Route 11B	*537
Lake Winnipesaukee: Entire shoreline within community	*506
Maps available for inspection at the Town Office, 88 Belknap Mountain Road, Gilford, New Hampshire.	
Send comments to The Honorable David R. Caron, Administrator of the Town of Gilford, Belknap County, 88 Belknap Mountain Road, Gilford, New Hampshire 03246.	
NEW YORK	
Coeymans (town), Albany County	
Coeymans Creek:	
At CONRAIL culvert	*79
At upstream corporate limits	*95
Feuri Spruyt:	
At downstream corporate limits	*406
Approximately 30 feet downstream of County Route 301 culvert	*428
At upstream side of Biers Road culvert	*457
Approximately 0.5 mile upstream of Biers Road culvert	*490
Approximately 1.0 mile upstream of Biers Road culvert	*531
Hannacrois Creek:	
At downstream corporate limits	*308
Approximately 100 feet upstream of the first crossing of State Route 143	*326
At upstream side of County Route 106	*354
At upstream side of second crossing of State Route 143	*396
Approximately 1.1 miles upstream of upstream State Route 143 crossing	*450
At upstream side of first crossing of County Route 111	*504
At upstream side of second crossing of County Route 111	*549
Approximately 990 feet downstream of third crossing of County Route 111	*570
At Alcove Reservoir Dam	*621
Hudson River:	
At downstream corporate limits	*16
AT upstream corporate limits	*18
Maps available for inspection at the Supervisor's Office, Russell Street, Ravena, New York.	
Send comments to The Honorable Winthrop Irwin, Supervisor of the Town of Coeymans, Albany County, Supervisor's Office, Russell Street, Ravena, New York 12143.	
Westerlo (town), Albany County	
Basic Creek:	
At corporate limits	*767
At upstream side of County Route 1	*1,145

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 330 feet downstream of State Route 85	*1,358
Eightmile Creek:	
At corporate limits	*961
At upstream side of Forst County Route 402 corssing	*1,184
Approximately 1,730 feet upstream of the third County Route 402 crossing	*1,267
Hannacrois Creek:	
At downstream corporate limits	*627
At upstreasm side of Tan Hollow Road	*810
At upstream corporate limits	*886
Maps available for inspection at the Town Hall, Westerlo, New York.	
Send comments to The Honorable Richard Rapp, Supervisor of the Town of Westerlo, Albany County, Box 148, Westerlo, New York 12193.	
OREGON	
Crook County (unincorporated areas)	
Crooked River:	
Approximately 1,600 feet downstream of the confluence with Ochoco Creek	*2,829
Approximately 1,000 feet downstream of Ochoco Highway 41	*2,848
Approximately 325 feet upstream of Ochoco Highway 41	*2,850
Approximately 1,300 feet upstream of the confluence with the Juniper Canyon Constructed Channel	*2,862
Ochoco Creek:	
At the confluence with Crooked River	*2,831
Approximately 350 feet downstream of Harwood Street	*2,852
At Combsflat Road	*2,884
Approximately 90 feet downstream of the confluence with Johnson Creek	*2,923
Approximately 50 feet upstream of Wayland Road	*3,001
Maps are available for review at the Crook County Courthouse, 300 East Third, Prineville, Oregon.	
Send comments to The Honorable Dick Hoppes, Chairman, Crook County Board of Commissioners, Crook County Courthouse, 300 East Third, Prineville, Oregon 97754.	
Jefferson County (unincorporated areas)	
Willow Creek:	
Approximately 400 feet upstream of the Burlington Northern Railroad	*2,229
Approximately 1,200 feet upstream of the Burlington Northern Railroad	*2,232
Approximately 1,350 feet upstream of C Street	*2,252
Approximately 1,900 feet upstream of C Street	*2,254
Approximately 3,000 feet upstream of C Street	*2,261
Approximately 40 feet downstream of McTaggert Road	*2,268
Approximately 3,000 feet upstream of McTaggert Road	*2,297
Unnamed Stream Through Culver: Approximately 2,000 feet south of the intersection of the Burlington Northern Railroad and Highland lane (just east of the Railroad Tracks)	#1
Maps are available for review at the Jefferson County Courthouse, 657 C Street, Madras, Oregon.	
Send comments to The Honorable Herschel Read, Judge, Jefferson County, County Courthouse, 657 C Street, Madras, Oregon 97741.	
Prineville (city), Crook County	
Crooked River:	
Approximately 950 feet downstream of Ochoco Highway 41	*2,848
Approximately 325 feet upstream of Ochoco Highway 41	*2,850
Approximately 5,200 feet upstream of Ochoco Highway 41	*2,856
Ochoco Creek:	
Approximately 1,200 feet upstream of Gardner Road	*2,846
On the upstream side of North Elm Street	*2,867

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Combsflat Road	*2,884
Maps are available for review at City Hall, 400 East Third, Prineville, Oregon.	
Send comments to the Honorable Wallace Boe, Mayor, City of Prineville, 400 East Third, Prineville, Oregon 97754.	
Wheeler County (unincorporated areas)	
Bridge Creek:	
Approximately 1,400 feet downstream of the downstream crossing of U.S. Highway 26	*2,581
Approximately 1,500 feet downstream of the upstream crossing of U.S. Highway 26	*2,650
At western corporate limits of the City of Mitchell	*2,710
Keyes Creek:	
Approximately 500 feet upstream of Prairie Road	*2,861
Approximately 1,500 feet upstream of Prairie Road	*2,895
Maps are available for review at the Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon.	
Send comments to Judge Albert Lee Hoover, Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon 97830.	
PENNSYLVANIA	
Bell (township), Clearfield County	
West Branch Susquehanna River:	
Approximately .4 mile downstream of Mahaffey (Borough) corporate limits	*1,262
Approximately 1,500 feet upstream of State Highway 322	*1,297
Chest Creek:	
At confluence with West Branch Susquehanna River	*1,271
Approximately 1,250 feet upstream of T-324	*1,276
Bear Run:	
At confluence with West Branch Susquehanna River	*1,290
Approximately 1,140 feet upstream of State Highway 36	*1,322
Maps available for inspection at the home of Twila Peterson, Township Secretary, R.D. 1, Mahaffey, Pennsylvania.	
Send comments to The Honorable Lynn Bouch, Chairman of the Township of Bell Board of Supervisors, Clearfield County, R.D. 1, Mahaffey, Pennsylvania 15757.	
Berwich (borough), Columbia County	
Susquehanna River:	
At downstream corporate limits	*493
At upstream corporate limits	*500
East Branch Briar Creek:	
At downstream corporate limits	*510
At North Warren Street	*531
At approximately 0.14 mile upstream from upstream corporate limits	*534
Glen Brook:	
At downstream corporate limits	*549
At approximately 160 feet upstream from upstream corporate limits	*587
Maps available for inspection at the Municipal Building, 344 Market Street, Berwick, Pennsylvania.	
Send comments to The Honorable Kirk Bower, President of the Borough of Berwick Council, Columbia County, 344 Market Street, Berwick, Pennsylvania 18603.	
Coalmont (borough), Huntingdon County	
Shoup Run:	
Approximately 1,530 feet downstream of State Route 913	*1,065
Approximately 640 feet upstream of confluence with unnamed tributary to Shoup Run	*1,124
Coal Bank Run:	
At confluence with Shoup Run	*1,098
Approximately 30 feet upstream of Watson Street culvert	*1,118
Unnamed Tributary to Shoup Run:	
At confluence with Shoup Run	*1,113
Approximately 445 feet upstream of State Route 913 culvert	*1,142
Maps available for inspection at the Coalmont Borough Building, Schell Street, Coalmont, Pennsylvania.	
Send comments to The Honorable S. Gene Bussard, President of the Borough of Coalmont Council, Huntingdon County, R.D. 1, Saxton, Pennsylvania 16678.	
Fishing Creek (township), Columbia County	
Fishing Creek:	
Approximately 500 feet downstream of downstream corporate limits	*607
Upstream side of L.R. 19067	*662
At upstream corporate limits	*723
Huntington Creek:	
At confluence with Fishing Creek	*625
Approximately 560 feet upstream of Mill Dam	*697
Maps available for inspection at the Township Building, Route 47, Pennsylvania.	
Send comments to The Honorable William W. Beishline, Chairman of Fishing Creek Board of Supervisors, Columbia County, R.D. #1, Stillwater, Pennsylvania 17878.	
Hastings (borough), Cambria County	
Brubaker Run:	
At downstream corporate limits	*1,704
At upstream corporate limits	*1,746
Unnamed Tributary to Brubaker Run:	
At confluence with Brubaker Run	*1,712
Approximately 720 feet upstream of Laurel Drive	*1,737
Maps available for inspection at the Hastings Municipal Building, 5th Avenue, Hastings, Pennsylvania.	
Send comments to The Honorable Mary Bakajza, President of the Borough of Hastings Council, Cambria County, P.O. Box 272, Hastings, Pennsylvania 16646.	
Henderson (township), Huntingdon County	
Juniata River:	
At downstream corporate limits	*599
At upstream corporate limits	*618
Maps available for inspection at the residence of Ms. Carolynne Wilson, Township Secretary, F.D. 4, Box 367A, Huntingdon, Pennsylvania.	
Send comments to The Honorable William Snyder, Chairman of the Township of Henderson Board of Supervisors, Huntingdon County, R.D. 3, Box 223, Huntingdon, Pennsylvania 16652.	
Hopewell (township), Huntingdon County	
Shoup Run:	
Downstream corporate limits	*828
Downstream of State Route 913	*881
Upstream corporate limits	*903
Maps available for inspection at the residence of Ms. Sally Giornesto, Township Secretary, 511 10th Street, Saxton, Pennsylvania.	
Send comments to The Honorable Fred Weaver, Chairman of the Township of Hopewell Board of Supervisors, Huntingdon County, Saxton, Pennsylvania 16678.	
Howard (Borough), Centre County	
Lick Run:	
Approximately 500 feet downstream of Mill Street	*672
Approximately 950 feet upstream of CONRAIL	*703
Maps available for inspection at the Borough Building, Howard, Pennsylvania.	
Send comments to The Honorable Philip Winchell, President of the Borough of Howard Council, Centre County, R.D. 1, Howard, Pennsylvania 16841.	
Howard (Township), Centre County	
Lick Run:	
Approximately 1,150 feet downstream of T-948	*704
Approximately 800 feet upstream of T-948	*747
Maps available for inspection at the Township Building, Howard, Pennsylvania, please contact Dan Lyons at (814) 625-2728.	
Send comments to The Honorable Paul J. Gardner, Chairman of the Township of Howard Board of Supervisors, Centre County, R.D. 1, Box 369, Howard, Pennsylvania 16841.	
Huston (Township), Clearfield County	
Bennett Branch:	
Approximately .9 mile downstream of confluence with Moose Run	*1,227
Approximately 400 feet upstream of confluence with Mountain Run	*1,263
Wilson Run:	
At confluence with Bennett Branch	*1,236
Approximately 400 feet upstream of State Route 153	*1,291
Maps available for inspection at the home of Gail Ann Kalgren, Township Secretary, R.D. 1, Box 4181, Penfield, Pennsylvania.	
Send comments to The Honorable Clyde Llewellyn, Chairman of the Township of Huston Board of Supervisors, Clearfield County, Penfield, Pennsylvania 15849.	
Hyndman (Borough), Bedford County	
Wills Creek:	
Approximately 60 feet downstream of CSX Transportation Railroad bridge	*897
Approximately 50 feet upstream of upstream corporate limits	*970
Approximately 0.3 mile upstream of upstream corporate limits	*986
Maps available for inspection at the Hyndman Senior Citizen Building, Water Street, Hyndman, Pennsylvania.	
Send comments to The Honorable Stanley Robinson, President of the Hyndman Borough Council, Bedford County, Hyndman, Pennsylvania 15545.	
Jackson (Township), Huntingdon County	
Standing Stone Creek:	
Approximately 1,600 feet downstream of State Routes 26 and 305	*727
Approximately 2,000 feet upstream of L.R. 31068	*760
East Branch Standing Stone Creek:	
Approximately 100 feet downstream of L.R. 31056	*741
Approximately 900 feet upstream of L.R. 31056	*760
Maps available for inspection at the residence of Leroy J. Koch, Township Secretary, R.D. 1, Box 456, Petersburg, Pennsylvania 16669.	
Send comments to The Honorable Ralph M Weiler, Chairman of the Township of Jackson Board of Supervisors, Huntingdon County, R.D 1, Petersburg, Pennsylvania 16669.	
Lawrence (Township), Clearfield County	
Moose Creek:	
At L.R. 17052	*1,101
Approximately 1,200 feet upstream of U.S. Route 322	*1,259
Montgomery Creek:	
At CSX transportation	*1,112
Approximately 300 feet upstream of T-506	*1,167
West Branch Susquehanna River:	
At downstream corporate limits of Clearfield Borough	*1,097
At upstream corporate limits of Clearfield Borough	*1,106
Maps available for inspection at the Township Building, Clearfield, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Daniel Duckett, Chairman of the Township of Lawrence Board of Supervisors, Clearfield County, Box 508, Clearfield, Pennsylvania 16830.	
Logan (township), Huntingdon County	
Juniata River:	
At confluence of Shaver Creek	*675
At confluence of Frankstown Branch Juniata River	*679
Shaver Creek: From the confluence with the Juniata River upstream for approximately 1 mile (backwater from Juniata River)	*675
Little Juniata River:	
At confluence with Frankstown Branch Juniata River and Juniata River	*679
At upstream corporate limits	*702
Maps available for inspection at the residence of Mrs. Peggy L. Harman, Township Secretary, R.D. 1, Box 366, Alexandria, Pennsylvania.	
Send comments to The Honorable Charles R. Metz, Chairman of the Township of Logan Board of Supervisors, Huntingdon County, R.D. 1, Alexandria, Pennsylvania 16611.	
Madison (township), Columbia County	
Little Fishing Creek:	
Downstream corporate limits	*551
Upstream corporate limits	*632
Maps available for inspection at the Township Building, Route 254, Jerseytown, Pennsylvania.	
Send comments to The Honorable Dayton W. Hess, Chairman of the Township of Madison Board of Supervisors, Columbia County, R.D. #9, Box 316, Bloomsburg, Pennsylvania 17815.	
Petersburg (borough), Huntingdon County	
Shaver Creek:	
Downstream corporate limits	*675
Upstream corporate limits	*675
Maps available for inspection at the Petersburg Borough Building, Washington Street, Petersburg, Pennsylvania.	
Send comments to The Honorable Guy C. Croye, Jr., President of the Borough of Petersburg Council, Huntingdon County, P.O. Box 34, Petersburg, Pennsylvania 16669.	
Pike (township), Clearfield County	
Anderson Creek:	
Approximately .33 mile downstream from downstream corporate limits	*1,161
Approximately .25 mile upstream from T-208	*1,199
Maps available for inspection at the Township Building, Route 879, Curwensville, Pennsylvania.	
Send comments to The Honorable Charles Walker, Chairman of the Township of Pike Board of Supervisors, Clearfield County, P.O. Box 219, Curwensville, Pennsylvania 16833.	
Quemahoning (township), Somerset County	
Stony Creek River:	
At downstream corporate limits	*1,543
Approximately 300 feet upstream of most upstream crossing of T-666	*1,776
Maps available for inspection at the township of Quemahoning, Somerset County, Pennsylvania.	
Send comments to The Honorable Samuel F. Donia, Chairman of the Township of Quemahoning Board of Supervisors, Somerset County, R.D. 2, Box 3, Stoystown, Pennsylvania 15563.	
Shirley (township), Huntingdon County	
Juniata River:	
At downstream corporate limits	*541
At upstream corporate limits	*556
Aughwick Creek:	
Approximately 1.8 miles downstream of U.S. Route 522	*560
Approximately 350 feet upstream of U.S. Route 522	*571
Maps available for inspection at the Shirley Township Building, Route 522, Mt. Union, Pennsylvania.	
Send comments to The Honorable John R. McGarvey, Chairman of the Township of Shirley Board of Supervisors, Huntingdon County, R.D. 1, Box 116, Shirleysburg, Pennsylvania 17260.	
Spangler (borough), Cambria County	
West Branch Susquehanna River:	
At downstream corporate limits	*1,448
At upstream corporate limits	*1,481
Fox Run:	
At confluence with West Branch Susquehanna River	*1,475
At upstream corporate limits	*1,521
Browns Run:	
At confluence with West Branch Susquehanna River	*1,461
At upstream corporate limits	*1,472
Maps available for inspection at the Borough Garage, Spangler, Pennsylvania.	
Send comments to The Honorable William C. Young, Spangler Borough Councilman, Cambria County, 21 North Crawford Avenue, Box 103, Spangler, Pennsylvania 15775.	
Stillwater (borough), Columbia County	
Fishing Creek:	
At most downstream corporate limits	*665
At most upstream corporate limits	*718
Raven Creek:	
At confluence with Fishing Creek	*689
At upstream corporate limits	*712
Maps available for inspection at the Borough Building, McHenry Street, Stillwater, Pennsylvania.	
Send comments to The Honorable John S. Kline, Jr., President of the Borough of Stillwater Council, Columbia County, Box 23, Stillwater, Pennsylvania 17878.	
Todd (township), Huntingdon County	
Yellow Branch:	
At confluence with Great Trough Creek	*1,521
Approximately 0.2 mile upstream of State Highway 994	*1,537
Unnamed Tributary to Great Trough Creek:	
At confluence with Great Trough Creek	$1,123
Approximately 0.3 mile upstream of County Road	*1,126
Maps available for inspection at the residence of Clair C. Rickabaugh, R.D., Todd, Pennsylvania.	
Send comments to The Honorable John M. Leader, Chairman of the Township of Todd Board of Supervisors, Huntingdon County, Box 8A, Robertsdale, Pennsylvania 16674.	
Washington (township), Cambria County	
Bear Rock Run:	
At downstream corporate limits	*1,935
Approximately 860 feet upstream of the confluence of Burgoon Run	*1,980
Burgoon Run:	
At the confluence with Bear Rock Run	*1,966
Approximately 1,100 feet upstream of the confluence with Bear Rock Run	*1,990
Maps available for inspection at the Township Building, Jones Street, Extension, Lilly, Pennsylvania.	
Send comments to The Honorable Earl Smith, Supervisor of the Township of Washington, Cambria County, R.D. 1, Box 736, Lilly, Pennsylvania 15938.	
Westover (borough), Clearfield County	
Chest Creek:	
At downstream corporate limits	*1,349
Approximately 250 feet upstream of CONRAIL	*1,359
Maps available for inspection at the Borough Building, Westover, Pennsylvania.	
Send comments to The Honorable Clifton Nevling, Mayor of the Borough of Westover, Clearfield County, Westover, Pennsylvania 16692.	
TEXAS	
Trophy Club (town), Denton County	
Marshall Branch:	
At downstream corporate limits	*564
Downstream side of State Route 114	*596
Indian Creek:	
At downstream corporate limits	*576
Approximately 730 feet upstream of Greenleaf Drive	*600
Maps available for inspection at 100 Municipal Drive, Trophy Club, Texas.	
Send comments to The Honorable James P. Carter, Mayor of the Town of Trophy Club, Denton County, 100 Municipal Drive, Trophy Club, Texas 75060.	
VIRGINIA	
Caroline County, (unincorporated areas)	
Mattaponi River:	
Approximately 9.4 miles downstream of State Route 647	*52
At confluence with the Matta River and Poni River	*120
Matta River:	
At confluence with the Poni River	*120
At State Road 632	*137
Poni River:	
At confluence with the Matta River	*120
Approximately 375 feet upstream of State Road 606	*128
North Anna River:	
At confluence with Pamunkey River	*61
Approximately 3.4 miles upstream of U.S. Route 1	*103
Maps available for inspection at the County Planning Department, 109B Ennis Street, Bowling Green, Virginia.	
Send comments to The Honorable John A. Anzivino, Administrator of the County of Caroline, Caroline County, County Courthouse, Bowling Green, Virginia 22427.	
WEST VIRGINIA	
Franklin (town), Pendleton County	
South Branch Potomac River:	
Approximately 1,500' east of intersection of Meadow Lane and South Branch Street	*1,682
Approximately 100' east of intersection of South Branch Street and Mill Road	*1,692
Maps available for inspection at the Town Hall, Franklin, West Virginia.	
Send comments to The Honorable Bruce Minor, Mayor of the Town of Franklin, Pendleton County, Box 483, Franklin, West Virginia 26807.	
Grant County (unincorporated areas)	
South Branch Potomac River:	
Approximately 2,000 feet downstream of confluence of Mill Creek	*923
Approximately 2.9 miles upstream of the town of Petersburg corporate limits	*989
Maps available for inspection at the County Assessor's Office, County Courthouse, 5 Highland Avenue, Petersburg, West Virginia.	
Send comments to The Honorable Pauline B. Hyre, President of the Grant County Commission, 5 Highland Avenue, Petersburg, West Virginia 26847.	
Pendleton County (unincorporated areas)	
South Branch Potomac River:	
Approximately 1,100' downstream of U.S. Route 33	*1,647

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2.4 miles upstream of U.S. Route 33	*1,715
Maps available for inspection at the County Clerk's Office, County Courthouse, Franklin, West Virginia.	
Send comments to The Honorable Harold L. Miller, President of the Pendleton County Commission, Pendleton County, P.O. Box 187, Franklin, West Virginia 26807.	
Petersburg (city), Grant County	
South Branch Potomac River:	
Approximately 0.7 mile downstream of U.S. Route 220	*926
Approximately 1.3 miles upstream of U.S. Route 220	*955
Maps available for inspection at the City Office, 23 Virginia Avenue, Petersburg, West Virginia.	
Send comments to The Honorable Arlyn Arnold, Mayor of the City of Petersburg, Grant County, P.O. Box 669, Petersburg, West Virginia 26847.	
WISCONSIN	
Merton (village), Waukesha County	
Bark River:	
Just upstream of Dorn Road	*939
About 1,750 feet upstream of Mill Pond Dam	*951
Maps available for inspection at the Village Hall, 28343 Sussex Road, Merton, Wisconsin.	
Send comments to The Honorable Marvin Becker, Village President, Village of Merton, Village Hall, 28343 Sussex Road, Merton, Wisconsin 53056.	
Waupaca (city), Waupaca County	
Crystal River:	
About 2,600 feet downstream of Riverside Drive Dam	*808
Just downstream of Riverside Drive Dam	*813
Just upstream of Riverside Drive Dam	*827
Just downstream of U.S. Highway 10	*829
Waupaca River:	
About 1,300 feet downstream of Shearer Street	*825
Just downstream of Washington Street Dam	*836
Just upstream of Washington Street Dam	*865
Just downstream of Harrison Street	*866
Maps available for inspection at the City Hall, 124 South Washington Street, Waupaca, Wisconsin.	
Send comments to The Honorable James W. Boyer, Mayor, City of Waupaca, City Hall, 124 South Washington Street, Waupaca, Wisconsin 54981.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Cave Creek, Maricopa County.	Cave Creek	At Carefree Highway	*1,869	*1,869
			At confluence of Andora Hills Wash	*2,007	*2,007
			At confluence of Willow Springs Wash	*2,057	*2,057
			Approximately 300 feet upstream of Cahava Ranch Road.	*2,137	*2,137
		Andora Hills Wash	At confluence with Cave Creek	*2,007	*2,007
			Approximately 50 feet upstream of Basin Road	*2,143	*2,143
			Approximately 400 feet upstream of Piedra Grand Road.	*2,277	*2,277
		Galloway Wash	At confluence with Cave Creek	*2,030	*2,030
			Approximately 60 feet downstream of School House Road.	*2,170	*2,170
			Approximately 170 feet downstream of Scopa Trail.	*2,310	*2,310
		Rowe Wash	At confluence with Galloway Wash	*2,111	*2,111
			Approximately 100 feet downstream of School House Road.	*2,175	*2,175
			Approximately 1,730 feet upstream of Echo Canyon Road.	*3,215	*3,315
		Grapevine Wash	At confluence with Galloway Wash	*2,180	*2,180
			Approximately 2,250 feet upstream of confluence with Galloway Wash.	*2,227	*2,227
			Approximately 5,230 feet upstream of confluence with Galloway Wash.	*2,297	*2,297
		Octillo Wash	At confluence with Cave Creek	*2,039	*2,039
			Approximately 50 feet upstream of Spur Cross Road.	*2,117	*2,117
			Approximately 900 feet upstream of Lone Mountain Road.	*2,244	*2,244
		Willow Spring Wash	At confluence with Cave Creek	*2,057	*2,057
			Approximately 50 feet downstream of Spur Cross Road.	*2,135	*2,135
			Approximately 2,900 feet upstream of Spur Cross Road.	*2,188	*2,188
	Maps are available for review at Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.				
	Send comments to The Honorable Jacqueline Davis, Mayor, Town of Cave Creek, P.O. Box 330, Cave Creek, Arizona 85331.				
Arizona	Pima County, unincorporated areas.	Aqua Caliente Wash	City of Tucson corporate limits at Houghton Road	*2,586	*2,587
			Just downstyream of Fort Lowell Road	*2,641	*2,641
			Just upstream of Soldier Trail	*2,694	*2,692
			At the confluence of Molina Wash	*2,749	*2,748
		Pantano Wash	At the confluence with Rillito Creek, approximately 530 feet downstream of Craycroft Road.	*2,428	*2,428
			Approximately 50 feet upstream of Harrison Road	*2,728	*2,726

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Houghton Road	*2,767	*2,771
			Approximately 100 feet upstream of Los Reales Road.	*2,917	*2,916
			Just downstream of Vail Road	None	*3,134
			Just downstream of the dam at the Limit of Detailed Study.	None	*3,193
		Rincon Creek	At confluence with Pantano Wash	*2,836	*2,834
			Just upstream of of Old Spanish Trail	*2,879	*2,879
			At Camino Loma Alta	*2,986	*2,984
			At the confluence of an unnamed tributary located approximately 1,500 feet east of Township Range R16E/R17E, in Section 17 of Township 15 South.	*3,070	*3,070

Maps are available for review at the Pima County Department of Public Works, Flood Control Division, 1313 S. Mission Road, Tucson, Arizona.

Send comments to The Honorable David Yetman, Chairman, Pima County Board of Supervisors, 130 West Congress, Tucson, Arizona 85726.

Arizona	City of Tucson, Pima County.	Pantano Wash	Just downstream of the city corporate limits located approximately 1,100 feet downstream of Tanque Verde Road.	*2,495	*2,491
			At Speedway Boulevard	*2,541	*2,537
			Approximately 100 feet upstream of East 22nd Street.	*2,608	*2,613
			Approximately 100 feet upstream of Golf Links Road.	*2,670	*2,665
			Just downstream of Harrison Road	None	*2,725
			At an unnamed road located approximately 3,700 feet upstream of Houghton Road extended.	None	*2,786
		Aqua Caliente Wash	At Jones Road	*2,555	*2,566
			At the intersection of Tanque Verde Road and Houghton Road extended.	*2,593	*2,591

Maps are available for review at the City Hall Annex, Third Floor, Tucson, Arizona.

Send comments to The Honorable Thomas Volgy, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726-7210.

Hawaii	Maui County	Kihei Gulch 1	Approximately 300 feet upstream of Mouth	None	*7
			Approximately 150 feet upstream of Kihei Road	None	*8
			Approximately 825 feet upstream of Kihei Road	None	*14
		Waipuilani Gulch	Approximately 690 feet upstream of Mouth	#2	*8
			Approximately 725 feet upstream of Kihei Road	#3	*14
			Approximately 1,350 feet upstream of Kihei Road	#3	*21
		Kulanihakoi Gulch	Approximately 275 feet upstream of Kihei Road	*7	*9
			Approximately 830 feet downstream of Kanakanui Road.	#3	*14
			Just downstream of Kanakanui Road	#3	*18
		Kalialinui Gulch	Approximately 725 feet upstream of Alano Street	None	*14
			Approximately 230 feet downstream of Keolani Road.	None	*18
			Just upstream of Haleakala Highway	None	*34
		Kamiloloa Gulch	Approximately 150 feet downstream of Kapaakeal Loop.	None	*3
			Approximately 180 feet upstream of Kamehameha V Highway.	None	*12
			Approximately 840 feet upstream of Kamehameha V Highway.	None	*25
		Kaunakakai Stream	At Mouth	*3	*3
			Approximately 220 feet upstream of Kamehameha V Highway.	None	*10
			Approximately 1,850 feet upstream of Kamehameha V Highway.	None	*17
		Mile 84 Stream	Approximately 100 feet upstream of Mouth	#3	*2
			Approximately 140 feet upstream of Ena Street	None	*18
			Approximately 200 feet upstream of Haena Street	None	*28
		Pacific Ocean	Approximately 4,700 feet east along Kula Road from the intersection of Kula and Hobron Roads.	*18	*20
			Approximately 400 feet south of a point on Kula Road, 4,700 feet east of the intersection of Kula and Hobron Roads.	*15	*12
			About 800 feet north of where the Kahului Railroad crosses Kalialinui Gulch.	*20	*18
			About 200 feet east of where the Kahului Railroad crosses Kalialinui Gulch.	*18	*12

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Maui County Department of Public Works, Division of Land Use and Code Administration, 200 South High Street, Wailuku, Hawaii.					
Send comments to The Honorable Hannibal Tavares, Mayor, Maui County, 200 South High Street, Wailuku Hawaii 96793.					
Kansas	City of Nickerson, Reno County.	Bull Creek	About 1,600 feet upstream of Riverton Road	*1,592	*1,592
			About 3,400 feet upstream of Nickerson Road	*1,598	*1,602
		Arkansas River	Just downstream of Nickerson Road	*1,591	*1,591
			About 700 feet downstream of Centennial Road	*1,601	*1,602
Maps are available for inspection at the City Hall, Nickerson, Kansas.					
Send comments to The Honorable Melvin Schreiber Mayor, City of Nickerson, P.O. Box 52, Nickerson, Kansas 67561.					
Kansas	City of Willowbrook, Reno County.	Cow Creek	About 0.9 mile downstream of 50th Avenue	None	*1,558
			About 1,500 feet upstream of 50th Avenue	None	*1,562
Maps are available for inspection at the Home of Mrs. Robert Wiley, Willowbrook, Kansas.					
Send comments to The Honorable Howard J. Carey, Jr., Mayor, City of Willowbrook, 401 Wiley Building, Hutchinson, Kansas 67502.					
Kentucky	City of Barbourville, Knox County.	Cumberland River	About 0.6 mile dowstream of State Route 11	*988	*985
			About 1.2 miles upstream of State Route 11	None	*0988
		Richland Creek	Within Community	*988	*986
Maps are available for inspection at the City Hall, Barbourville, Kentucky.					
Send comments to The Honorable Phillip Conniey, Mayor, City of Barbourville, P.O. Box 705, Barbourville, Kentucky 40906.					
Louisiana	St. Tammany Parish, unincorporated areas.	Tchefuncta River	Approximately .9 mile upstream of State Route 21.	None	*16
			At State Route 1077	None	*68
		Bogue Falaya	Approximately 350 feet upstream of State Route 437.	None	*28
			At Hosmer Mill Road	None	*33
			At Camp Covington Bridge	None	*57
		Little Bouge Falaya	Approximately 1.6 mile upstream of confluence with Bogue Falaya.	None	*43
			Just downstream of confluence with East Fork	None	*43
		Abita Creek	At confluence with Abita River	None	*34
			Approximately .8 mile upstream of State Route 435.	None	*46
		English Branch	At confluence with Abita River	None	*34
			Approximately 4.1 miles upstream of confluence with Abita River.	None	*46
		Long Branch	At State Route 59	None	*30
			Approximately .3 mile upstream of Abita Springs corporate limits.	None	*31
		Long Branch Tributary	Approximately 1,950 feet downstream of Abita Springs corporate limits.	None	*33
			At Tarpon Springs Road	None	*38
		Southwind Branch	At confluence with Abita River	None	*21
			At Illinois Central Gulf Railroad	None	*30
		Ponchitolawa Creek	At confluence with Tchefuncta River	None	*9
			Approximately 1.5 miles upstream of Illinois Central Railroad.	None	*32
Massachusetts	Lowell, City, Middlesex County.	Merrimack River	Approximately 3.2 miles upstream of Pawtucket Dam.	*103	*106
			Approximately 1.6 miles downstream of State Routes 38 and 110 (Huntsfalls Bridge).	59	*62
		Black Brook	Upstream side of Boston and Maine Railroad crossing.	None	*103
			Approximately 0.8 miles upstream of Westford Street.	None	*112
		Beaver Brook	Upstream side of Veterans of Foreign Wars Highway.	None	*76
			Approximately 1,050 feet upstream of Veterans of Foreign Wars Highway.	None	*76
		Concord River	Approximately 450 feet downstream of Merrimack Street.	*65	*70
			Approximately 1,200 feet upstream of Interstate Route 495 East.	*105	*104
		River Meadow	Approximately 350 feet downstream of Lawrence Street.	None	*74
			Approximately 200 feet upstream of East Industrial Avenue.	None	*109
		Marginal Brook	Approximately 50 feet upstream of Billerica Street	None	*104

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,000 feet upstream of Hollis Street.	None	*127
		Trull Brook Tributary	Approximately 0.7 mile downstream of Phoenix Avenue.	None	*110
			Approximately 250 feet upstream of Boston and Maine Railroad.	None	*130

Maps are available for inspection at the Building Inspector's Office, City Hall, 375 Merrimack Street, Lowell, Massachusetts.

Send comments to The Honorable James J. Campbell, Manager of the City of Lowell, Middlesex County, City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852.

Missouri	City of Lee's Summit, Jackson and Cass County.	Little Blue River	About 1.33 miles downstream of confluence of May Brook.	*777	*765
			Just upstream of View High Drive	*821	*807
		East Fork Little Blue River	Just downstream of U.S. Highway 40	*775	*769
			Just downstream of Blue Springs Lake Dam	*777	*769
		May Brook	At Mouth	*782	*770
			About 1,900 feet downstream of May Brook Road	*784	*784
		Tributary L2	Just upstream of Gregory Boulevard	*863	*873
			About 1,400 feet upstream of Beechwood Drive	*895	*890
		Cedar Creek	At mouth	*818	*805
			About 1,300 feet downstream or Sunset Drive	*883	*883
		Tributary C2	Just upstream of 3rd Street	*936	*936
			Just upstream of U.S. Highway 50	*952	*950
		Longview Lake	Within community	*891	*907
		Blue Springs Lake	Within community	*794	*819

Maps are available for inspection at the City Hall, 207 SW. Market, Lee's Summit, Missouri.

Send comments to The Honorable Bob Jones, Mayor, City of Lee's Summit, City Hall, 207 SW. Market, Lee's Summit, Missouri

Virginia	Fairfax County, unincorporated areas.	Pimmit Run	Approximately 520 feet downstream of State Route 694.	None	*275
			At State Route 695	None	*281
			At footbridge, approximately .4 mile downstream of State Route 7 culvert.	None	*322
			Approximately 670 feet upstream of State Route 7.	None	*360
		Little Hunting Creek	At confluence with Potomac River	None	*9
			Approximately 45 feet downstream of U.S. Route 1.	None	*16
			Approximately 440 feet upstream of Janna Lee Avenue.	None	*25
			Approximately 1.17 miles upstream of Janna Lee Avenue.	None	*32
		Tributary 1 to Little Hunting Creek.	Approximately .2 mile upstream of Camden Street	None	*9
		North Branch	At confluence with Little Hunting Creek	None	*9
			At downstream side of State Route 628	None	*12
			Approximately .19 mile upstream of confluence of Paul Spring Branch.	None	*19
		Tributary 1 to North Branch	At confluence with North Branch	None	*12
			Approximately .2 mile upstream of Stacey Road	None	*17
		Paul Spring Branch	At confluence with North Branch	None	*17
			At downstream side of State Route 626 culvert	None	*50
			At downstream side of Paul Spring Road culvert	None	*81
			Approximately 800 feet upstream of University Drive.	None	*153
		Dogue Creek	Approximately 875 downstream of Mount Vernon Road.	None	*9
			Approximately 50 feet downstream of U.S. Route 1.	None	*14
			Approximately 250 feet upstream of State Route 622.	None	*20
			Approximately .34 mile above confluence of Barnyard Run.	None	*35
			At upstream side of State Route 611	None	*68
		North Fork Dogue Creek	At confluence with Dogue Creek	None	*12
			At upstream side of State Route 624 Culvert	None	*22
			Approximately 250 feet upstream of Woodley Drive culvert.	None	*35
		Tributary 1 to North Fork Dogue Creek.	Approximately 295 feet upstream of State Route 623.	None	*15
			At downstream side of State Route 622 culvert	None	*19
			At upstream of Frye Road culvert	None	*23
		Tributary 2 to North Fork Dogue Creek.	At confluence with North Fork Dogue Creek	None	*18

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream side of State Route 235 culvert	None	*24
			Approximately .72 mile above confluence with Fourmile Run.	None	*214
		Long Branch of Fourmile Run	Approximately 82 feet downstream of State Route 714.	None	*255
			Approximately .23 mile upstream of Olin Drive	None	*307
		Tripps Run	Approximately 625 feet downstream of Potterton Drive.	None	*213
			Approximately 540 feet downstream of State Route 613.	226	*226
			Approximately 395 feet downstream of Dashiell Road.	*244	*241
			Approximately 535 feet upstream of State Route 649.	*255	*248
			Approximately 325 feet upstream of Sissler's Bridge.	None	*280
		Holmes Run	Approximately 475 feet downstream of Lakeview Causeway.	None	*210
			Approximately 615 feet upstream of State Route 613.	*226	*226
			Approximately 170 feet downstream of State Route 649.	*258	*255
			At the downstream side of U.S. Route 50	*295	*292
			Approximately 275 feet downstream of U.S. Routes 29 and 211.	*320	*322
			Approximately .21 mile upstream of State Route 703.	None	*341

Maps are available for inspection at the Department of Public Works, Utilities Planning and Design Division, Storm Drainage Branch, 3930 Pender Drive, Fairfax, Virginia.

Send comments to The Honorable J. Hamilton Lambert, Fairfax County Executive, 4100 Chain Bridge Road, Fairfax Virginia 22030.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: November 1, 1988.

[FR Doc. 88-25688 Filed 11-4-88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-88-127PR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Additional Reporting Requirements for Handlers)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This proposal was recommended by the Navel and Valencia Orange Administrative Committees (committees), the agencies responsible for local administration of the orders.

The proposal would require handlers of navel and Valencia oranges to submit information to the committees reflecting the quantity of oranges harvested on a weekly basis. Receiving this information on a weekly basis would enable the committees to more efficiently carry out their auditing functions to monitor handler compliance with the marketing orders.

DATE: Comments must be received by December 7, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), both as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. 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 rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. 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 fiscal 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 California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This proposed rule invites comments on proposed changes to the administrative rules and regulations of the navel and Valencia orange marketing orders. The proposed changes would require handlers to report information on oranges harvested to the committee on a weekly, rather than periodic, basis.

Sections 907.72 and 908.72 of the navel and Valencia orange marketing orders, respectively, require that upon request of the committees, with the approval of the Secretary of Agriculture, every person subject to regulation under the navel and Valencia orange marketing orders shall furnish to the committees, in such manner and at such times as they may prescribe, such information as will enable the committees to perform their duties. Thus, the committees have the authority to request additional information from handlers to help the committees perform their duties under their respective orders.

Sections 907.142 and 908.142 of the administrative rules and regulations of the orders currently require handlers, at the request of the committees, to submit information on oranges harvested and other information on Handler Report of Picks and Estimates forms (Base Estimate Forms No. 1). The information required on this form must be provided for each grower who delivers oranges to the handler, broken down by individual groves. The proposed weekly reporting requirement requests only gross figures of the number of cartons harvested by all of a handler's growers for the preceding week and cumulatively for the season.

In the past, because of the detailed nature of the report, the committees have requested submission of the Handler Report of Picks and Estimates only three or four times during the marketing year. This periodic information on oranges harvested is used to determine the status of the industry and individual handlers at a given point in the marketing year regarding the quantity of oranges harvested and the quantity remaining for harvest. If information on the quantity of oranges harvested were submitted on a weekly basis, it would improve the data base available to the committees and enable them to more closely monitor the flow of oranges from grower to handler to final disposition. For auditing purposes, this comparison could help identify marketing order violations if discrepancies in the figures occur.

In addition, information on oranges harvested could be included in the weekly handler bulletins to provide information on the relative disposition of the annual crop to all industry handlers. Handlers could then use this information as an aid in making their marketing decisions.

This action would require handlers to submit to the committees additional information on the quantity of oranges harvested on a weekly basis. It is estimated that the additional information would take less than five minutes to complete and this should present no significant burden to the approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders.

Therefore, the committees recommended amending §§ 907.142 and 908.142 of the rules and regulations under the navel and Valencia orange marketing orders, respectively, to require handlers to submit information regarding the quantity of oranges harvested on a weekly basis on new

N.O.A.C./V.O.A.C. Forms No. 37. This form would be printed on the lower, currently unused, portion of N.O.A.C./V.O.A.C. Forms No. 4, which are weekly reports of orange shipments from handlers. All information reported weekly would then be on one information sheet.

Thus, §§ 907.142 and 908.142 of the navel and Valencia marketing orders are proposed to be amended by redesignating paragraph (a) as paragraph (a)(2) and adding a new paragraph (a)(1). In addition, a revision of paragraph (b) is proposed to provide gender neutral language.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in §§ 907.142 and 908.142 of this proposed rule will be submitted to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

2. Section 907.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 907.140 of this part, submit to the committee each Friday on N.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the marketing year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handlers control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a complete N.O.A.C. Form No. 29—Inventory Report of Navel Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 908.140 of this part, submit to the committee each Friday on V.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the marketing year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handlers control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed V.O.A.C. Form No. 29—Inventory Report of Valencia Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

Dated: November 2, 1988.

Robert C. Kennedy,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25712 Filed 11–4–88; 8:45 am]

BILLING CODE 3410–02–M

Notices

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: ACTION.

ACTION: Information collection request under review.

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

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

Need and Use: ACTION needs to differentiate between volunteer support expenses and direct volunteer payments reported by its grantees as well as the amount generated to meet required share within the non-Federal costs under the Domestic Volunteer Services Act. ACTION needs volunteer years and strength in several categories to meet the purposes of the Act.

To Obtain Information About or to Submit Comments on This Proposed Information Collection, Please Contact both:

Melvin E. Beetle, Clearance Officer, ACTION, Room M–600, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634–9321; and James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395–7316.

Office of ACTION Issuing the Proposal: Office of Management and Budget.

Title of Form: Supplement to SF–269A.

Type of Request and Respondent's Obligation to Reply: New Mandatory.

General Description of Respondents: State and Local governments; non-profit organizations.

Estimated Response Burden: Overall Figure in Burden Hours—24,000.

Number of respondents by group	Average burden minutes per response	Frequency of response
1,500 grantees....	240	Quarterly

Date: November 1, 1988.

Melvin E. Beetle,

Clearance Officer, ACTION.

[FR Doc. 88–25675 Filed 11–4–88; 8:45 am]

BILLING CODE 6050–28–M

Student Community Service Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; student community service projects.

Student Community Service Program, ACTION, announces the availability of funds for Fiscal Year 1989 for new VISTA/Student Community Service grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.).

Application kits and technical assistance on grant application preparation are available from the ACTION State Office. One completed application form and two copies, with original signatures on all three documents, must be received in the appropriate ACTION State Office no later than 5:00 p.m. local standard time on February 3, 1989. Any application received after that date will not be considered for Fiscal Year 1989 funding. However, applications post-marked 5 days before the deadline date will be accepted for consideration.

Background on Student Community Service Program: The following information sets out the final guidelines under which Student Community Service Projects operate. The Guidelines are divided into seven parts which deal with the overall program philosophy, as well as responsibilities of the sponsor, staff, volunteers and volunteer placement sites. It also includes basic data on the administration of a Student Community Service Project.

DATE: These Guidelines took effect January 11, 1988.

These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Service-Learning Program Guidelines published in the **Federal Register** dated May 22, 1986, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

II. Purpose

Student Community Service Projects are authorized under Title I, Part B, sections 111 and 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be

continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising, and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in Part VI.

J. The grantee must ensure compliance with the restrictions outlined in Part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicants' accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum Federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedure for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees,* which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees,* which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the

lowest possible cost consistent with the effective operation of the project. Project coast for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kep available for inspection at the request of ACTION and shall be preserved for at lease three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the quarter.
3. The number of volunteer hours generated during the quarter.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special restrictions on Student Community Service Project grantees:

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or

proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222-1039 617/565-7000

ACTION State Office, Abraham Ribicoff Federal Building, 450 Main Street, Room 524, Hartford, CT 06103-3002, 203/240-3237.

ACTION State Office, Federal Building, Room 305,76 Pearl Street, Portland, ME 04101-4288, 207/780-3414.

ACTION State Office, 10 Causeway Street, Room 473, Boston, MA 02222-1038 617/565-7000.

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office and Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301-3939, 603/225-1450.

ACTION State Office, John E. Fogarty Building, Room 200, 24 Weybosset Street, Providence, RI 02903-2882, 401/528-5424.

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-3481.

ACTION State Office, 402 East State Street, Room 422, Trenton, NJ 08608-1507, 609/989-2243.

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-4471.

(Upstate New York)

ACTION State Office, U.S. Courthouse and Federal Building, 445 Broadway, Room 103, Albany, NY 12207-2923, 518/472-3664.

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Office Building, Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918-2241, 809/766-5314.

Region III

ACTION Regional Office, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106-2912, 215/597-9972.

ACTION State Office, Federal Building, Room 372-D, 600 Federal Place, Louisville, KY 40202-2230, 502/582-6384.

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814, 301/962-4443.

ACTION State Office, Federal Building, Room 500, 85 Marconi Boulevard,

Columbus, OH 43215–2888, 614/469–7441.
ACTION State Office, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, 215/597–3543.

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1823, 804/771–2197.
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409, 304/347–5246.

Region IV

ACTION Regional Office, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323–2301, 404/331–2859.
ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307, 205/731–1908.
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750, 407/648–6117.
ACTION State Office, 75 Piedmont Avenue, NE., Suite 412, Atlanta, GA 30303–2587, 404/331–4646.
ACTION State Office, Federal Building, Room, 1005–A, 100 West Capitol Street, Jackson, MS 39269–1092, 601/965–5664.
ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739, 919/856–4731.
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430, 803/765–5771.
ACTION State Office, Federal Bldg./U.S. Courthouse, 801 Broadway, Room 246. Nashville, TN 37203–3889, 615/736–5561.

Region V

ACTION Regional Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964, 312/353–5107.
ACTION State Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964, 312/353–3622.
ACTION Regional Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922, 317/269–6724.
ACTION State Office, Federal Building, Room 722, 210 Walnut, Des Moines, IA 50309–2195, 515/284–4816.
ACTION State Office, Federal Building, Room 658, 231 West Lafayette Boulevard, Detroit, MI 48226–2799, 313/226–7848.
ACTION State Office, Old Federal Building, Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596, 612/334–4083.
ACTION State Office, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202–4507, 414/291–1118.

Region VI

ACTION Regional Office, 1100 Commerce, Room 6B11, Dallas, TX 75242–0696, 214/767–9494.
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, 501/378–5234.
ACTION State Office, Federal Building, Room 248, 444 SE. Quincy, Topeka, KS 66603–3501, 913/295–2540.
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910, 505/389–0471.
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009, 816/426–5256.
ACTION State Office, Old Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026, 505/988–6577.
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093, 405/231–5201.
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747, 512/482–5671.

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, 303/844–2671.
ACTION State Office, Columbine Building, Room 301, 1845 Sherman Street, Denver, CO 80203–1167, 303/866–1070.
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, 307/772–2385.
ACTION State Office, Federal Office Building, Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101, 406/449–5404.
ACTION State Office, Federal Building, Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896, 402/437–5493.

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, 605/224–5996.
ACTION State Office, U.S. Post Office and Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198, 801/524–5411.

Region IX

ACTION Regional Office, 211 Main Street, Room 530, San Francisco, CA 94105–1914, 415/974–0673.
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190, 602/261–4825.
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974, 415/974–0690.
ACTION State Office, Federal Building, Room 14218, 11000 Wilshire Boulevard, Los Angeles, CA 90024–3671, 213/209–7421.

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850–0001, 808/541–2832.
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, 702/784–5314.

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103, 206/442–1558, (Alaska).
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, 208/334–1707.
ACTION State Office, Suite 3039, Federal Office Building, 909 First Avenue, Seattle, WA 98174–1103, 206/442–4975.
ACTION State Office, Federal Building, Room 647, 511 NW., Broadway, Portland, OR 97209–3416, 503/221–2261.

(42. U.S.C. 4974)

Dated in Washington, DC, on October 31, 1988.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 88–25676 Filed 11–4–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987 (Pub. L. 92–463, 86 Stat. 770–776), U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council.

Date: December 14–15, 1988.

Time: 9:00 a.m.—5:00 p.m..

Place: Department of Agriculture, Room 107–A, Administration Building, Washington, DC.

Type of Meeting: Open to public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The Council will be deliberating the McIntire-Stennis Forestry Research program with particular emphasis on forestry research planning, annual distribution of funds, and administration of McIntire-Stennis Cooperative Forestry Research program.

Contact Person for Agenda and More Information: Dr. Boyd W. Post, Cooperative State Research Service, Suite 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20251–2200; telephone (202) 447–2016.

Dated November 1, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–25711 Filed 11–4–88; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 7684–01 and 7684–02]

Actions Affecting Export Privileges; Dan Peter Tadmor, Individually and Doing Business as Agentek, Ltd., Respondent

Summary

Pursuant to the October 3, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, the December 22, 1987 Order denying export privileges to Respondents Tadmor and Agentek, Ltd., is hereby amended by deleting Agentek, Ltd. in the caption and wherever it appears in or as a result of that Order, and substituting the following in its stead: Aktis Ltd., Yehoratan Street 32, Zahala, Tel Aviv, Israel.

Order

On October 3, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Upon review and based on the facts in this case, I hereby affirm the recommended Decision and Order of the ALJ.

This constitutes final Agency action in this matter.

Date: November 1, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Decision and Order

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th and Constitution Avenue NW., Washington, DC 20230.

Appearance for Respondent: James W. Schroeder, Esq., Kaplan Russin and Vecchi, 1215 Seventeenth Street NW., Washington, DC 20036.

On December 22, 1987 (52 FR 48057, December 29, 1987), Tadmor and Agentek Ltd., wer denied all privileges of participating, in any manner or capacity, in transactions involving U.S.-origin commodities or technical data, pursuant to Part 388 of the Export Administration Regulations (currently codified at 15 CFR Part 388 (1988)) (Regulations).

Agency Counsel has filed a petition to reopen the proceeding under § 388.18 of the regulations to amend the Order, in which Counsel for Agentek (1987) Ltd., has joined. The record submitted reflects that the denied person Tadmor changed his company's name to Aktis Ltd., as well as its location. Additionally, Counsel have provided representations and documentation concerning the purchase of what have been termed various agency and service agreements formerly held by Agentek Ltd., as well as Agentek's good will, but not the company itself, by persons unrelated to Tadmor, while the administrative proceedings were pending and without his disclosing that fact to the purchasers. It appears that Tadmor retained the shell corporate entity and changed its name to Akis Ltd., while the purchasers acquired the assets, goodwill and name. Pursuant to Israeli law, the purchasers then changed the name of one of their existing corporations to Agentek (1987) Ltd., on December 24, 1987.

Following its review of those documents and after making independent inquiry, the Agency officials concluded that the owners of Agentek (1987) Ltd., had no prior knowledge of the Agency's investigation or proposed action against Tadmor. It also appears that Tadmor has no involvement with or interest in Agentek (1987) Ltd.

Based upon the representations made, I find that modifying the Order of December 22, 1987, as to Agentek Ltd., is warranted, and that such amendment to that Order will not jeopardize its purpose.

I further find that the firm known as "Agentek (1987) Ltd.", while having the same address as Agentek Ltd., is not denied U.S. export privileges under the terms of the Order.

Accordingly, it is hereby Ordered that the order of December 22, 1987 is amended by deleting Agentek Ltd., in the caption and wherever else it appears and substituting the following:

Aktis Ltd., Yehoratan Street 32, Zahala, Tel Aviv, Israel

This amendment as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: October 3, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88–25660 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–01–M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held December 2, 1988, 9:30 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of parameters for software.
4. Discussion of factory networking and communications.
5. Discussion of machine tools in CCL 1091.
6. Discussion of sensory control systems.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1)

shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Anne Ferrell at (202) 377–2583.

Date: November 2, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–25706 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–802]

Postponement of Final Antidumping Duty Determination and Postponement of Antidumping Duty Public Hearing; 3.5" Microdisks and Coated Media Thereof from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from respondent Fuji Photo Film Company, Ltd. to postpone the final determination as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our final determination as to whether sales of 3.5" microdisks and coated media thereof from Japan have occurred at less than fair value until not later than February 6, 1989. We are also postponing our public hearing until December 7, 1988.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Charles Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–3530 or (202) 377–5288.

SUPPLEMENTARY INFORMATION: On September 29, 1988, we published a preliminary determination of sales at less than fair value of this merchandise (53 FR 38045).

On October 31, Fuji Photo Film Company, Ltd. requested a 60 day postponement of the date of the final determination. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than February 6, 1989.

Public Comment

In conjunction with this postponement, a public hearing to afford interested parties an opportunity to comment on the preliminary determination, in accordance with 19 CFR 353.47, will now be held, if requested, at 10:00 a.m. on December 7, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by November 30, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: November 1, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–25704 Filed 11–4–88; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Stainless Steel Wire Rod; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain type 430 stainless steel wire rod.

DATE: Comments must be submitted on or before November 17, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the U.S.A. for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for stainless steel wire rod, type 430, in diameters ranging from 0.217 to 0.275 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than November 17, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Dated: October 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–25705 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Modification; Mr. Sherman Jones (P321); Modification No. 2 to Permit No. 461

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 461 issued to Mr. Sherman C. Jones, 702 Cullen Street, Corpus Christi, Texas 78411, on April 5, 1984 (49 FR 14781), as modified on December 31, 1986 (53 FR 567), is further modified as follows:

Section B.8 is replaced with:

8. This Permit is valid with respect to the taking authorized herein until December 31, 1989.

This modification becomes effective upon publication in the **Federal Register.**

The Permit and modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702.

Date: October 31, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–25677 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Assistant Secretary for Communications and Information, Advisory Committee on Advanced Television, Partially Closed Meeting

A meeting of the Commerce Advisory Committee on Advanced Television will be held November 17, 1988, 10:00 a.m. to 12:00 p.m., in the Secretary's Conference Room, U.S. Department of Commerce, Washington, DC. Due to difficulites in scheduling and the requirement that the Advisory Committee meet at least twice in 1988, in order to produce a report to the Secretary of Commerce by January 4, 1989, an abbreviated notice period is being given for this meeting.

The Committee advises the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues. The meeting is scheduled to consist of (1) opening remarks; (2) a background briefing; and, (3) preliminary discussion of the impact of advanced television on the competitiveness of U.S. industry and matters related to the development and implementation of advanced television.

The General Session of the meeting will be open to the public and a limited numbers of seats will be available on a first-come first-served basis. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 2, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4), and (c)(9)(B). The discussions are likely to disclose privileged or confidential commercial information and information for which premature disclosure would likely significantly frustrate the implementation of proposed agency actions. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 6628, Department of Commerce.)

FOR FURTHER INFORMATION CONTACT: James Spurlock, Office of the Assistant Secretary for Communications and Information, Room H4898, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–377–1551.

Date: November 2, 1988.

Charles G. Schott,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 88–25727 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commission of Customs adjusting limits.

EFFECTIVE DATE: November 2, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 641 is being increased by application of swing, reducing the limit for Category 341. Categories 347/348, 634 and 635 are being increased for carryforward.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 13115, published on April 21, 1987; and 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation Of Textile Agreements

November 2, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the

Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 2, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category levels in group I	Adjusted 12-month limit [1]
341	454,700 dozen.
347/348	2,272,600 dozen.
634	518,100 dozen.
635	541,200 dozen.
641	1,210,950 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Also effective on Nov. 2, 1988, you are directed to deduct 1987 overshipment charges of 338,980 pounds from the charges made to the current limit for Category 659–S. This same amount is to be charged to the 1987 limit for Category 659–S established in the directive of April 17, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25672 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 435 is being increased by application of swing and carryforward. The limit for Categories 445/446 is being reduced to account for the swing applied to category 435.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 50, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Hungarian People's Republic and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 9, 1988 the directive of December 30, 1987 is further amended to include adjustments to the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Hungarian People's Republic:

Category	Adjusted limit [1]
435	11,768 dozen.
445/446	36,863 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–25658 Filed 11–4–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 1, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for certain cotton and man-made fiber textile products are being adjusted, variously, for carryforward, swing, carryover and special shift.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 51, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 8, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-mo limit [1]
Levels in Group I:	
226/313	86,072,513 square yards.
315	44,579,312 square yards.
331	744,185 dozen pairs.
334	49,847 dozen.
335	58,643 dozen.
336	151,669 dozen.
338	2,905,674 dozen.
339	698,230 dozen.
340	160,578 dozen.
341	263,102 dozen.
342	88,211 dozen.
347/348	360,431 dozen.
351	45,796 dozen.
352	216,980 dozen.
369-D [2]	2,289,800 pounds of which not more than 858,675 pounds shall be in pile dish towels in TSUSA numbers 366.1720, 366.1740, 366.2020, 366.2040, 366.2420 and 366.2440.
Groups II: 300, 301, 314, 317, 326, 330, 332, 333, 337, 345, 349, 350, 353, 354, 359, 360-362, 369-S [3] and 369-0 [4], as a group.	74,371,818 square yeads equivalent.
Level in Group III:.	
615	17,490,000 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[3] In Category 369-S, only TSUSA number 366.2840.

[4] In Category 369-0 all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840, and 366.2860.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25657 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United States Arab Emirates

October 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: November 7, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates. The United States has decided, inasmuch as no solution has been reached in consultations with the Government of the United Arab Emirates on mutually satisfactory limits for these categories, to control imports of cotton and man-made fiber textile products in Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on June 27, 1988 and extends through June 26, 1989.

The United States remains committed in finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

October 28, 1988

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 7, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period which began on June 27, 1988 and extends through June 26, 1989, in excess of the following restraint limits:

Category	Restraint limit [1]
338/339	176,565 dozen.
340/640	157,919 dozen.
341/641	121,205 dozen.
347/348	115,942 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 26, 1988.

Textile products in Categories 338/339, 340/640, 341/641 and 347/348 which have been exported to the United States prior to June 27, 1988 shall not be subject to the limits established in this directive.

Textile products in Categories 338/339, 340/640, 341/641 and 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on November 7, 1988 you are directed to charge the following amounts to the limits established in this directive. These charges are for goods imported during the period June 27, 1987 through August 31, 1988.

Category	Amount to be charged
338	13,204 dozen.
339	33,828 dozen.
340	52,344 dozen.
341	29,445 dozen.
347	16,827 dozen.
348	24,008 dozen.
640	492 dozen.
641	2,297 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25541 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DR-M

The Correlation; Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States Annotated for 1989

November 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUMMARY: The Committee for the Implementation of Textile Agreements announces that the 1989 CORRELATION, based on the Harmonized Tariff Schedule of the United States Annotated, will be available beginning December 1, 1988.

Copies of the CORRELATION may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Rm H3100, Washington, DC 20230, ATTN: CORRELATION, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25659 Filed 11-4-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aerospace Applications of Superconductors will meet on 12-13 December 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review selected applications of superconductors and to begin drafting a report. 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. 88-25717 Filed 11-4-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 19-20 December 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review electronic warfare programs. 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. 88-25716 Filed 11-4-88; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of Record System Notice

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of an amendment to a DLA system of records for public comment.

SUMMARY: The Defense Logistics Agency of the Department of Defense proposes to amend an existing system of records subject to the Privacy Act of 1974.

DATES: The proposed action will be effective without further notice on December 7, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, Telephone: 202-274-6234, Autovon: 284-6234.

SUPPLEMENTARY INFORMATION: This existing record system was published at 53 FR 4442, February 16, 1988. The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc 85-10237 (50 FR 22897) May 29, 1985 (DoD Compilation).

FR Doc. 85-30123 (50 FR 51898) December 20, 1985.

FR Doc. 86-17259 (51 FR 27443) July 31, 1986.

FR Doc. 86-19035 (51 FR 30104) August 22, 1986.

FR Doc. 87-21654 (52 FR 35304) September 18, 1987.

FR Doc. 87-22481 (52 FR 37495) October 7, 1987.

FR Doc. 88-03220 (53 FR 04442) February 16, 1988.

FR Doc. 88-06658 (53 FR 09965) March 28, 1988.

FR Doc. 88-12863 (53 FR 21511) June 8, 1988.

FR Doc. 88-15473 (53 FR 26105) July 11, 1988.

FR Doc. 88-19066 (53 FR 32091) August 23, 1988.

This notice is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

November 2, 1988.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DLA-LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base.

CHANGE:

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal Revenue Service (IRS):

Add: "To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filters."

S322.10 DLA-LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Navy Postgraduates School, Monterey, CA 93920-5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA.

Decentralizes segments-Portions of this file may be maintained by the military personnel and finance centers of the services; selected civilian contractors with research contracts in

manpower area and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and after or who have been a member of reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later. DoD civilian employees of DoD civilian employees separated since January 1, 1971. All veterans who have used GI Bill education and training employment service office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute, all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969. Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services, National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Veterans Administration; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Veterans Administration or who are covered by a Veterans Administration insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants. Individuals receiving a security background investigation as identified in the Defense Central index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as home town, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training; programs, military hospitalization records and home and work addresses.

Champus claim records containing enrollee, patient and provided data such as cause of treatment, amount of payment, name and social security or tax ID of providers or potential providers of care, military compensation data, selective service registration data, Veterans Administration disability payment records and credit of financial data as required for security background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; Pub. L. 97–252; Pub. L. 97–365; 10 U.S.C. 2358; 10 U.S.C. 2397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the manpower trends, support personnel functions, perform longitudinal statistical analysis, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs and to collect debts owned to the United States Government and state and local governments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Veterans Administration (VA): To administer Veterans Administration and DoD programs for Reserve pay, VA compensation, military retired pay and active duty separation payments. To analyze the cost to the individual of military service connected disabilities, to monitor the amount of coverage under the Veterans' Group Life insurance program, and to provide information on individuals; eligibility for GI Bill education and training benfits. To Veterans Administration and its contractor, the Prudential Insurance Company; to notify members of the individual Ready Reserve (IRR) of their right to apply for Veterans' Group Life Insurance coverage. To the Veterans Administration Management Sciences Division, Statistical Policy and Research Office, Office of Information Management and Statistics, for the purpose of selection samples for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Internal Revenue Service (IRS): For the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for debt collection. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

Department of Health and Human Services (DHHS): Disclosure of information from this system may be made to the Office of the Inspector General for the purpose of identification and investigation of DoD employees (military and civilian) who may be improperly receiving funds under the Aid of Families of Dependent Children Program. To the Office of Child Support Enforcement, pursuant to Pub. L. 93–647, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

Social Security Administration (DHHS): To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings. To the Bureau of Supplemental Security Income for the purpose of verification and adjustment of payments made by the SSA to the active and retired military members under the Supplemental Security Income Program.

DOD Civilian Contractors: Disclosure of information may be made from this system to contractors for the purpose of performing research on manpower problems for statistical analyses.

Office of Personnel Management (OPM): Disclosure of information may be made for this system for the purpose of OPM carrying out its management functions. Records disclosed concern pay, benefits, retirement deductions, and other information necessary for those management functions.

Selective Service Systems (SSS): Information from this system may be disclosed to the Director of the Selective Service System for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the

provisions of the Selective Service registration regulations.

Department of Education (DOE): Disclosure of information may be made from this system to DOE for the purpose of identifying individuals who appear to be in default of their guaranteed student loan so as to permit DOE to take action, where appropriate, to accelerate recoveries of defaulted loans.

Department of Labor (DOL): To reconcile the accuracy of unemployment compensation payments made on behalf of former DOD employees and members.

Federal Government and Quasi-Federal Agencies: To identify military retirees employees in a civilian capacity whose civilian pay must be offset as a result of increases in military retiree pay pursuant to the Budget Reconciliation Act of 1982, Pub. L. 97–252.

To Federal Agencies, Territorial, State, and Local Governments: To support personnel functions requiring data on prior military service credit for their employees or for job applications. To help eliminate fraud and abuse in their benefit programs and to collect debts and overpayments owed to those programs. Information released includes name, social security number and mailing address of individuals.

Other Federal Agencies: To help eliminate fraud and abuse in the program administered by agencies within the Federal government and to collect debts and overpayment owed to the Federal government. Information release may include aggregate data and/or individual records in the record system may be transferred to any other federal agencies having a legitimate need for such information and applying appropriate safeguards to protect data so provided. Records of debtors obligated to DOD, but currently employed by another federal agency may be referred to the employing agency under the provisions of the Debt Collection Act of 1982 for the purpose of the debt.

Consumer Reporting Agencies: Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Area (15 U.S.C. 11681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Credit Bureaus and Debt Collection Agencies: Disclosures may be referred to private contract organizations to comply with the provisions of the Debt Collection of 1982 (10 U.S.C. 136) for non-payment of an outstanding debt, and to comply with requirements to update security clearance investigations.

Defense Contractors: To monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

Financial Institutions: To contact employees to avoid escheatment of an employee's account or to otherwise benefit employees.

State, Local, or Territorial Government: To return unclaimed property or assets to employees.

Blanket Routine Uses: See also the blanket routine used set forth at the beginning of the Defense Logistics Agency's listing of systems of records which are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name. Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—At W.R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—tapes are stored in a bank type vault and buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center (DMDC) 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the System Manager.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determination are contained in DLA Regulation 5400.12 (32 CFR Part 1286) and may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, federal and Quasi-federal agencies, Selective Service System, the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–25700 Filed 11–4–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

AGENCY: Department of Education.

ACTION: Notice of closing date for Institutions to file "Request for Institutional Eligibility for Programs" to participate in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1989–90 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that wish to participate in the "campus-based programs" in the 1989–90 award year to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1989-90 award year is July 1, 1989 through June 30, 1990.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

DATES: *Closing Date for Filing Application.* To participate in a campus-based program in the 1989–90 award year, a currently ineligible institution must mail or hand deliver its "Request for Institutional Eligibility for Programs" form to the address indicated below on or before January 13, 1989.

ADDRESSES: *Applications Delivered by Mail.* An institutional Eligibility application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, 400 Maryland Avenue SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions which submit eligibility applications that are received after the closing date will not be considered for funding under the campus-based programs for award year 1989–90.

Applications Delivered by Hand

An institutional eligibility application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center (ACC), Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application for the 1989–90 award year eligibility that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION:

Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1989–90 to any currently ineligible institution unless the institution files its "Request for Institutional Eligibility for Programs" form (ED Form 1059) by the closing date. If the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1990–91 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary.

(2) A location of an eligible institution that is currently not included in the Department's eligibility certification but has been included in the institution's Fiscal Operations Report and Application to Participate (FISAP).

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking elibility as a separate institution of higher education. (ED Form 1059, OMB #1840–0098 approved through December 31, 1989).

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the FISAP (ED Form 646–1) that institutions were required to submit by September 16, 1988 for paper FISAP filers and September 30, 1988 for electronic FISAP filers, in order to receive funds under the campus-based programs for the 1989–90 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Perkins Loan Program, 34 CFR Part 674.

(3) College Work-Study Programs, 34 CFR Part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

FOR FURTHER INFORMATION CONTACT. For information concerning designation of eligibility, contact Dr. Joan E. Duval, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mail Stop 3329, ROB–3), Washington, DC 20202–5322. Telephone (202) 732–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations and Systems, 400 Maryland Avenue, SW., Washington, DC 20202–5455. Telephone: (202) 732–3711.

(20 U.S.C. 1987 *et seq.*; 42 U.S.C. 2751 *et seq.*) and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance, Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: October 28, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–25710 Filed 11–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; National Research Council

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) is announcing its intent to make a non-competitive financial assistance award pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2). Congress, recognizing the national need for improved processes and technologies for U.S. production of liquid fuels from unconventional domestic resources, has requested the Department of Energy (DOE) to submit a five year plan for a broad research program to meet the needs of the transportation sector based on plentiful domestic fuels such as coal (Senate Report 100–410). This study is to be conducted by the Energy Engineering Board of the National Research Council, which is an agency organized by the National Academy of Sciences and serves both the National Academy of Sciences and the National Academy of Engineering in the discharge of their responsibilities. The period of performance is expected to be from November 15, 1988 to February 14, 1990 and the estimated cost is $298,000.00.

Noncompetitive award of this grant

will be made pursuant to 10 CFR 600.7(b)(2). The Assistant Secretary for Fossil Energy on September 27, 1988 determined that the project is in the public interest because of the national need for improved processes and technologies for U.S. production of liquid fuel from unconventional domestic resources and that the National Research Council, through its Energy Engineering Board can provide an important national service by providing the DOE with independent and credible advice on these technologies. Accordingly, justification for this noncompetitive financial assistance award will be made pursuant to 10 CFR 600.7(b)(2)(i)(G).

PROCUREMENT REQUEST NUMBER: 01-89FE61694.000.

Authority: Department of Energy Organization Act; Pub. L. 95-91.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Valerie L. Pastore, MA-452.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6388.

Jeffrey Rubenstein,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88-25713 Filed 11-4-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-56-NG]

Great Lakes Gas Transmission Co.; Interim Order Amending Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of interim order amending authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order authorizing an increase in the volumes of natural gas Great Lakes Gas Transmission Company (Great Lakes) imports from and exports to Canada for a limited term until a final determination is made on its application pending before the ERA in Docket No. 88-56-NG. The interim order authorizes Great Lakes to temporarily increase by 62,500 Mcf the maximum daily volumes of gas it is currently authorized to import and export under a transportation service agreement with TransCanada Pipelines Limited to a total of 987,500 Mcf, thereby providing additional supplies to eastern Canadian markets which are currently threatened with shortfalls during the 1988-89 winter heating season months. None of the gas would be sold or marketed in the United States.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25714 Filed 11-4-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-7486-000, et al.]

Amoco Production Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

November 1, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 15, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-7486-000, D, Oct. 11, 1988.	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	El Paso Natural Gas Co., Jalmat Field, Lea County, New Mexico.	(1)
G-11414-004, B, Oct. 11, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., Tucker #3 well, El Dorado Gas Plant, Schleicher County, TX.	(2)
G-12213-002, B, Oct. 6, 1988.	Conoco Inc., P.O. Box 2197, Houston, TX 77252	El Paso Natural Gas Co., Wemac Field, Andrews County, TX.	(3)
G-17378-002, D, Oct. 7, 1988.	Texaco Inc., P.O. Box 52332, Houston, TX 77052	Transwestern Pipeline Co., Stratford Field, Sherman County, TX.	(4)
G-19127-001, D, Oct. 17, 1988.	Texaco Inc	Phillips 66 Natural Gas Co., Hugoton Field, Moore and Sherman Counties, TX.	(5)
CI62-569-000, D, Oct. 17, 1988.	Texaco Inc	Ringwood Gathering Co., Ringwood Field, Major County, OK.	(6)
CI64-1073-001, D, Oct. 12, 1988.	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252	K N Energy, Inc., Minto, *et al.*, Fields, Logan County, CO.	(7)
CI74-735-001, C, Oct. 11, 1988.	Phillips Petroleum Co., 990-G Plaza Office Building, Bartlesville, OK 74004.	Texas Eastern Transmission Corp., East Cameron Area, Block 321, Offshore, LA.	(8)
CI85-278-001, E, Oct. 17, 1988.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	ANR Pipeline Co., West Cameron 560 Field, Offshore, LA.	(9)
CI88-607-000 (CI84-1056), B, Aug. 15, 1988.	Tenneco Oil Co	United Gas Pipe Line Co., Bethany Field, Harrison and Panola Counties, TX.	(10)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI88-650-000 (G-18445), D, Sept. 30, 1988.	Chevron U.S.A. Inc.	Florida Gas Transmission Co., Shuteston Field, St. Landry Parish, LA.	(11)
CI89-2-000 (CI73-340), D, Oct. 3, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Questar Pipeline Co., Mam Creek Field, Garfield County, CO.	(12)
CI89-3-000 (CI61-1791), D, Oct. 3, 1988.	Union Exploration Partners, Ltd., 1201 West 5th St., P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corp., Vienna Field, Lavaca County, TX.	(13)
CI89-4-000 (CI84-253), D, Oct. 4, 1988.	Tenneco Oil Co	Panhandle Eastern Pipe Line Co., Greenwood Field *et al.*, Meade County, KS.	(14)
CI89-5-000 (CI68-197), B, Oct. 5, 1988.	TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, TX 75201.	Southern Natural Gas Co., Bayou Gentilly Field, Plaquemines Parish, LA.	(15)
CI89-6-000 (CI82-80-000), B, Oct. 5, 1988.	TXO Production Corp	Florida Gas Transmission Co., McGill Ranch Field, Kennedy County, TX.	(15)
CI89-8-000 (CI63-463), D, Oct. 6, 1988.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Southern Natural Gas Co., Felice Bayou Field, Plaquemines Parish, LA.	(16)
CI89-9-000 (CI79-437), B, Oct. 7, 1988.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Southern Natural Gas Co., Vermilion Block 242, Offshore, LA.	(17)
CI89-10-000, B, Oct. 11, 1988.	Conoco Inc	Phillips 66 Natural Gas Co., NW/4 Section 11, Block A-44, Andrews County, TX.	(18)
CI89-11-000 (CI65-525), F, Oct. 12, 1988.	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	(19)
CI89-12-000 (CI84-257), D, Oct. 12, 1988.	Tenneco Oil Co	Panhandle Eastern Pipe Line Co., Greenwood Field, *et al.*, Morton County, KS.	(20)
CI89-13-000, E, Oct. 14, 1988.	Northern Michigan Exploration Co., P.O. Box 1150, Jackson, MI 49204.	Texas Eastern Transmission Corp., Choudrant Field, Lincoln Parish, LA.	(21)
CI89-15-000 (G-3784), D, Oct. 14, 1988.	Sohio Petroleum Co., P.O. Box 4587, Houston, TX 77210.	Tennessee Gas Pipeline Co., Heyser Field, Calhoun County, TX.	(22)
CI89-16-000 (CI78-239), D, Oct. 13, 1988.	Amoco Production Co., P.O. Box 50879, New Orleans, LA 70150.	Columbia Gas Transmission Corp., West Cameron Block 605, Offshore, LA.	(23)
CI89-19-000, B, Oct. 19, 1988.	Har-Ken Oil Co., P.O. Box 626, Owensboro, KY 42302.	Texas Gas Transmission Corp., St. Charles Gas Field, Hopkins County, KY.	(15)
CI89-20-000 (G-8851), D, Oct. 19, 1988.	Tenneco Oil Co	Williams Natural Gas Co., Guyman-Hugoton Field, Texas County, OK.	(24)
CI89-21-000 (CI75-262), B, Oct. 19, 1988.	Tenneco Oil Co	El Paso Natural Gas Co., Cedardale NE, *et al.*, Field, Woodward County, OK.	(25)
CI89-22-000 (CI83-270), D, Oct. 20, 1988.	Texaco Producing Inc	CNG Transmission Corp., Eugene Island Block 196, Offshore, LA.	(26)

FOOTNOTES:

[1] By assignment dated May 19, 1987, Applicant assigned its interest in certain acreage to Doyle Hartman.

[2] Applicant requests authorization to abandon a sale of residue gas from its plant attributable to gas purchased from Lone Wolf Producing Company (Lone Wolf). Applicant states that the percentage-of-proceeds contract dated December 8, 1958, with Lone Wolf which dedicated gas produced from the Tucker #3 well has been terminated.

[3] Applicant's leasehold interest in the NE/4 and S/2 Section 2, Block A-44, PSL Survey, Andrews County, Texas, has expired.

[4] Effective August 1, 1988, Applicant assigned certain interests to Panhandle Pluggers Inc.

[5] Effective July 1, 1988, Applicant assigned certain interests to Richard Battley.

[6] Effective May 1, 1988, Applicant assigned certain interests to Jerry Sanner d/b/a Jerry Sanner Oil Properties.

[7] Four leases were released or surrendered. By assignments executed October 16, 1972, effective May 1, 1972, Applicant assigned its interest in certain acreage to Rex Monahan. By assignments executed January 1987, effective October 1, 1986, Applicant assigned its interest in certain acreage to Skaer Enterprises, Inc.

[8] By letter agreement dated July 1, 1988, Applicant's January 28, 1974, contract was amended to delete the depth limitation.

[9] Effective October 1, 1987, Applicant acquired certain interests from Atlantic Richfield Company.

[10] Applicant requests complete abandonment authorization due to the surrender of all dedicated leases.

[11] Effective October 1, 1987, Applicant assigned certain acreage to Flas Gas and Oil Southwest, Inc.

[12] Effective January 1, 1987, Applicant assigned certain interests to Hondo Oil and Gas Company and Koch Exploration Company.

[13] By sale and purchase agreement effective November 1, 1986, Applicant sold certain leases to Mitchell Energy Corporation. With the sales of these leases Applicant no longer has any interest in the properties dedicated to its August 13, 1979, contract.

[14] Effective August 1, 1986, Applicant assigned certain interests to Beresco Properties, Inc., to Kaiser-Francis Oil Company and to Cities Service Oil & Gas Co. All remaining leases under the contract have expired.

[15] Reserves depleted and well(s) plugged and abandoned.

[16] Effective December 1, 1987, Applicant assigned certain interests to Bay Coquille, Inc.

[17] The lease covering Vermilion Block 242 (OCS-G-3133) terminated September 2, 1988.

[18] Lease expiration.

[19] Effective May 1, 1988, Applicant acquired certain interests from BHP Petroleum Company, Inc.

[20] By assignments dated August 13, 1986, effective August 1, 1986, Applicant assigned its interest in certain acreage to Kaiser-Francis Oil Company and Beresco Properties, Inc.

[21] Effective May 1, 1988, Applicant acquired certain interests from Anderson Oil Company, Goodrich Oil Company, Research Enterprises, Inc., and The Hunter Company, Inc.

[22] By assignment dated September 23, 1988, effective July 1, 1988, Applicant assigned its interests in certain acreage to Sue Ann Oil & Gas Company.

[23] By assignment effective July 1, 1987, Applicant assigned certain acreage to W & T Offshore, Inc.

[24] Effective December 1, 1987, Applicant assigned certain acreage to Maple Properties Corporation.

[25] Effective December 1, 1987, Applicant assigned certain acreage to Meridian Oil Production, Inc. The remaining well was plugged and abandoned and the lease surrendered.

[26] Effective May 1, 1988, and June 1, 1988, Applicant assigned certain interests to Alliance Operating Corporation. Effective June 1, 1988, Applicant assigned certain interests to Amoco Production Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-25722 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT88-21-001, et al.]

South Georgia Natural Gas Company, et al., Natural gas pipeline Rate Filings

November 1, 1988.

Take notice that the following filings have been made with the Commission:

1. South Georgia Natural Gas Company

[Docket No. MT88-21-001]

Take notice that on October 27, 1988, South Georgia Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its

FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 16P First Revised Sheet No. 34P.1

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

2. Mid Louisiana Gas Company

[Docket No. MT88-4-002]

Take notice that on October 25, 1988, Mid Louisiana Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Revised Substitute Original Sheet No. 261
Substitute Original Sheet No. 26m

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

3. ANR Pipeline Company

[Docket No. MT88-19-002]

Take notice that on October 25, 1988, ANR Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Third Revised Sheet No. 1
Third Revised Sheet No. 134
Original Sheet No. 134-A
Third Revised Sheet No. 135
Original Sheet No. 136
Third Revised Sheet No. 138
Original Sheet No. 138-A
Substitute Original Sheet No. 164
Substitute Original Sheet No. 165
Substitute Original Sheet No. 166
Second Substitute Original Sheet No. 167

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

4. Southern Natural Gas Company

[Docket No. MT88-20-002]

Take notice that on October 27, 1988, Southern Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Sixth Revised Volume No. 1:

Substitute First Revised Sheet No. 30CC

Comment date: November 8, 1988, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraph

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25724 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

Assignment of New Docket Numbers; ANR Pipeline Co. et al.

November 2, 1988.

In the matter of ANR Pipeline Company, Docket No. GP89-2-000, Colorado Interstate Gas Company, Docket No. GP89-3-000, Columbia Gas Transmission Company, Docket No. GP89-4-000, Consolidated Natural Gas Transmission Corporation, Docket No. GP89-4-000, El Paso Natural Gas Company, Docket No. GP89-6-000, Mississippi River Transmission Corporation, Docket No. GP89-6-000, Mountain Fuel Resource, Inc., Docket No. GP89-8-000, Natural Gas Pipeline Corporation of America, Docket No. GP89-9-000, Northwest Pipeline Corporation, Docket No. GP89-10-000, Panhandle Eastern Pipeline Company, Docket No. GP89-11-000, Sea Robin Pipeline Company, Docket No. GP89-12-000, Southern Natural Gas Company, Docket No. GP89-13-000, Texas Eastern Transmission Corporation, Docket No. GP89-14-000, Texas Gas Transmission Corporation, Docket No. GP89-15-000, Transcontinental Gas Pipeline Corporation, Docket No. GP89-16-000, Trunkline Gas Company, Docket No. GP89-17-000, United Gas Pipeline Company, Docket No. GP89-18-000, Williams Natural Gas Company, Docket No. GP89-19-000, Williston Basin Interstate Pipeline Company, Docket No. GP89-20-000.

Notice is hereby given of the assignment of new docket numbers to the protest filings made by the above-referenced pipelines pursuant to Commission Order No. 473. The pipelines filed their protests in Docket No. RM86-7-000. For purposes of convenience and administrative control, each pipeline is being assigned a separate docket number, as set forth above.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25723 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 2, 1988.

Take notice that on October 27, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Twelfth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on November 1, 1988.

According to Granite State, the revised rates reflect changes in its projected cost of purchased gas since its quarterly purchased gas cost adjustment, effective October 1, 1988 in Docket No. TQ89-1-4-000. It is said that the filing reflects changes in projected gas costs primarily from two sources for the remaining months of the fourth quarter of 1988: purchases of Canadian gas through the medium of Boundary Gas, Inc., and purchases in spot markets. According to Granite State, Boundary Gas purchase costs change seasonally on November 1 and April 1 each year and the costs for its spot market purchases have increased above the levels projected in its October 1, 1988 purchased gas cost filing.

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 10, 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,

Secretary.

[FR Doc. 88-25718 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-41-001]

Paiute Pipeline Co.; Notice of Filing

November 1, 1988.

Take notice that on October 24, 1988, Paiute Pipeline Company (Paiute) filed Substitute Third Revised Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1988. Paiute also filed supporting schedules to reflect Northwest's amended rates.

Paiute states that this filing amends its filing of September 1, 1988, to reflect a change in rates. Paiute states that, in its initial filing, it reserved the right to submit a substitute sheet to track any Northwest revisions. Paiute states that if the amended rates submitted by Northwest are revised for any reason, Paiute again reserves the right to submit a substitute sheet to track the Northwest revisions.

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 (1988)). All such motions or protests should be filed on or before November 8, 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,

Secretary.

[FR Doc. 88-25719 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-2-000]

South Georgia Natural Gas Co.; Petition For Waiver

November 2, 1988.

Take notice that on October 11, 1988, South Georgia Natural Gas Company, (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81-63-000, all as more fully set forth in the petition which is on file with the Commission and open for public inspection.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of South Georgia's resale and direct sale customers. One provision of the Stipulation and Agreement requires South Georgia to resurvey triennially its customer's EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

Although the triennial update of customer EAU requirements is due this year, South Georgia has not received any information from its customers indicating a need or interest in updating their EAU requirements for 1988. By letter dated September 28, 1988, South Georgia notified its customers that it would be willing to file with the Commission a request for a waiver of the requirement that it update EAU requirements for 1988. The response from South Georgia's customers indicates that they do not desire to undertake a survey of their EAU requirements this year. In fact, every customer has indicated its willingness to forego this year's resurvey. Accordingly, South Georgia has unanimous support from its customers for this request for a waiver of the requirement that it update EAU requirements this year.

As a second basis for not requiring an update of EAU requirements this year, South Georgia submits that the granting of this waiver should not have an adverse impact on any essential agricultural users on South Georgia's system. South Georgia's Form 16 which shows projected supply requirements for the period September 1, 1988–August 31, 1989 does not project any firm curtailments for the upcoming 1988–89 winter period. Finally, the granting of South Georgia's requested waiver would not affect the right to future updates of EAU requirements as provided for in the Stipulation and Agreement and the Commission's Regulations.

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 November 14, 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,

Secretary.

[FR Doc. 88-25720 Filed 11-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-056, CP88-136-001, RP88-67-011]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 31, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 26, 1988 tendered for filing in compliance with the Joint Offfer of Settlement filed on May 27, 1988 (May 27 Settlement) by Texas Eastern and several other parties and in compliance with the Commission's September 29, 1988 Order in Docket Nos. RP85-177-044 through -046 and CP88-136-000 approving the May 27 Settlement, in the captioned dockets as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the tariff sheets listed on Appendices A and B. The tariff sheets listed in Appendix A for filing in Docket No. RP85-177, *et al.*, set forth the terms and conditions under which Texas Eastern will operate pursuant to the certificates of public convenience and necessity issued in an order dated September 29, 1988 in Docket No. CP88-136-000, *et al.*, and accepted by Texas Eastern on October 11, 1988. The tariff sheets listed in Appendix B for filing in Docket No. RP88-67, set forth the rates which Texas Eastern proposes to charge commencing on the effective date of the new services.

Texas Eastern states that the tariff sheets listed on Appendix A reflect the addition to its tariff of new Rate Schedules CD-1 and CD-2 and related Forms of Service Agreements and changes to Rate Schedule FT-1 to reflect the transportation certificate issued by the Commission to Texas Eastern pursuant to Subpart G of the Commission's Regulations.

Texas Eastern states that all blanket transportation request received prior to 7:00 a.m., November 1, 1988 will be deemed to have been received by Texas Eastern simultaneously on 7:00 a.m., November 1, 1988. Texas Eastern states

that blanket transportation requests received subsequent to 7:00 a.m., November 1, 1988, will be accorded a first-come/first-serve priority based upon the date such requests are received by Texas Eastern. Texas Eastern will continue to process transportation requests pursuant to Section 311 of the Natural Gas Policy Act.

Texas Eastern states that, as approved by the Commission by its September 29 Order, a Gas Supply Inventory Reservation Charge is included in the service agreements underlying new Rate Schedules CD–1 and DC–2 and in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff applicable to Rate Schedules DCQ and GS. The Gas Supply Inventory Reservation Charge is a unit rate equal to Texas Eastern's weighted average cost of gas from time to time (excluding prices paid pursuant to the 1964 Gulf Warranty Contract approved by the Commission in Docket No. CI64–26 and prices paid to existing interstate pipelines who do not have on file as part of their FERC Gas Tariff a similar Gas Supply Inventory Reservation Charge) times 20 percent. The Gas Supply Inventory Reservation Charge proposed to be effective as of November 1, 1988 and reflected on Sheet No. 50 is $0.4307.

Texas Eastern states it is making the following revisions to its Fifth Revised Volume No. 1 and Original Volume No. 2 Gas Tariffs in order to implement the certicates issued by the Commission:

(1) Rate Schedule IT–1 was revised to incorporate the governmental authorization pursuant to the blanket transportation certificate granted to Texas Eastern under which service will be provided.

(2) The filing reflects the termination of the Service Agreements under Rate Schedule TS–1, as of February 1, 1989.

(3) Sheet No. 1284 of Original Volume No. 2 is being filed in order to terminate Rate Schedule X–134 as of November 1, 1988 pursuant to ordering paragraph (B) of the Commission's order issued January 20, 1988 in Docket No. CP87–169.

(4) The remaining tariff sheets reflect changes filed by Texas Eastern on November 16, 1987, as modified by the December 31, 1987 Order, the May 27 Settlement, and tariff changes approved by the Commission subsequent to November 16, 1987.

In compliance with the May 27 Settlement and the September 29 Order, Texas Eastern is submitting the tariff sheets listed in Appendix B to specify the rates Texas Eastern will charge commencing with the effective date of the new services. These rates are based upon the RP88–67 cost of service motioned into effect on September 1, 1988 and accepted subject to refund by the Commission in Docket No. RP88–67 by order dated September 28, 1988. Sheet Nos. 484 and 489 incorporate Rate Schedules DC–1 and DC–2 in the Annual Overrun Penalties specified in Section 32 of Texas Eastern's General Terms and Conditions. Section 32 is in effect subject to refund pursuant to an order dated August 31, 1988 in Docket No. RP88–221.

Texas Eastern requests the Commission to waive all necessary rules and regulations to permit these tariff sheets to become effective November 1, 1988. In particular, Texas Eastern requests the Commission to promptly issue a notice of this filing and to issue on or before October 31, 1988, an order preferably by notational voting, accepting these tariff sheets with an effective date of November 1, 1988, the date Texas Eastern and the Customers desire to commence service pursuant to the certificates granted. Texas Eastern states that expedited approval of these tariff sheets is necessary to permit it to commence service pursuant to the certificates on November 1, 1988.

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 (1988)). All such motions or protests should be filed on or before November 7, 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 proceeeding. 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,

Secretary.

[FR Doc. 88–25721 Filed 11–4–88; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate adjustment—Pick-Sloan, Missouri Basin Program.

SUMMARY: The power repayment study for the Pick-Sloan Missouri Basin Program (P–SMBP), based on historical data through FY 1987, shows that existing power rates for both the Eastern and Western Divisions of the P–SMBP are not adequate to meet repayment requirements. To meet those requirements, the rates for firm power and peaking power are proposed to be increased as follows:

EASTERN DIVISION

Class of power	Present rate	Proposed rule
Firm capacity (kW)	$1.65/kW-month	$1.90/kW-month.
Firm energy (kWh)	4.41 mills/kWh	5.16 mills/kWh.
Additional charge for firm energy in excess of 60-percent monthly load factor	3.38 mills/kWh	3.38 mills/kWh.
Peaking capcity (kW)	$9.90/kW-season	$11.40/kW-season.
Peaking energy (kWh)	4.41 mills/kWh	5.16 mills/kWh.
Seasonal firm	Same as firm power rate.	

The proposed rate adjustment is to become effective on an interim basis on the first day of the October 1989 billing period.

The system load characteristics utilized in the rate design are based upon a projection of what can be expected 2 years into the future.

Previous rate designs have been based upon a 5-year rolling average of historical data.

The wide diversity of types of load in the service area results in customers with a wide range of monthly load factors. For the average customer, this rate design results in approximately 44 percent of the revenue derived from the capacity charge and approximately 56 percent derived from the energy charge.

The differential between the charge for 60 percent load factor energy and the charge for that above 60 percent load factor has not increased from the existing 3.38 mills/kWh. The purpose of this differential is to offset purchased energy costs associated with the higher load factor portion of the energy load. The cost of energy in this area has remained relatively stable during recent years, and is expected to increase only slightly in the near future. Analysis indicates that the existing rate will be adequate to meet purchase requirements.

Western Division

With the first day of the October 1989 billing period, the marketing criteria set forth in the "Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division" (51 FR 4012, January 31, 1986) (Post-1989 Criteria) become effective. Under the Post-1989 Criteria, the Western Area Power Administration's (Western) Loveland Area Office (LAO) will begin to market the firm resources of the P–SMBP-Western Division (WD) and the Fryingpan-Arkansas Project under one Loveland Area Projects (LAP) "blend rate." Because the effective date to the "blend rate" and the effective date of the P–SMBP-Eastern Division (ED) proposed rate adjustment coincide, the LAO will not develop a P–SMBP–WD rate schedule. However, the revenue requirement of the P–SMBP-WD is set forth in the P–SMBP customer brochure. There will be a public process for the Post-1989 Criteria LAP "blended rate" at a later date.

FOR FURTHER INFORMATION CONTACT: A brochure explaining the need for a rate increase will be distributed to all P–SMBP customers and other interested parties. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR Part 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rates and submit them to the Deputy Secretary to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in the Billings Area Office.

Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800*Telephone:* (406) 657–6532.

DATES: The consultation and comment period will begin on November 7, 1988, and will end February 6, 1989.

Public information forums, during which Western will explain the need for the rate increase and answer questions, will be held at the following places and times:

December 7, 1988—8:00 a.m.—Doublewood Inn, Fargo, North Dakota.
December 7, 1988—2:00 p.m.—Howard Johnson, Sioux City, Iowa.
December 8, 1988—9:00 a.m.—Holiday Inn, Northglenn, Colorado.
December 9, 1988—9:00 a.m.—Plaza Holiday Inn, Billings, Montana.

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following places and times:

January 10, 1989—9:00 a.m.—Holiday Inn, Northglenn, Colorado.
January 11, 1989—9:00 a.m.—Holiday Inn Airport, Sioux Falls, South Dakota.

Persons planning to speak at either of the January comment forums should send their names and organization affiliation to the address noted above so that they are received by January 3, 1989, so that a speaker list can be developed. Other persons may also be allowed to comment as time permits.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* the Reclamation Act, 43 U.S.C. 372, *et seq.,* as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the Flood Control Act of 1944, 58 Stat. 887; and the other acts specifically applicable to the project system involved.

Delegation Order No. 0204–108 was issued on December 14, 1983 (48 FR 55664, December 19, 1983). The order contains several provisions including delegating to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegating to the Deputy Secretary of the Department of Energy (DOE), on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR Part 903) were established September 4, 1985 (50 FR 37835, September 18, 1985). Power rate adjustments for P–SMBP are conducted consistent with 10 CFR Part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulation (40 CFR Parts 1500 through 1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western conducts an environmental evaluation of proposed rate adjustments.

Section D of the DOE guidelines indicates that the level of documentation for NEPA compliance is based on a comparison of the proposed rate adjustment and the rate of inflation since the last adjustment. Western will evaluate the proposed rate adjustment and prepare the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.,* each agency, when requried by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the P–SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for P–SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the P–SMBP rate. There is no requirement that members of the public participating in the development of the P–SMBP rate supply information about themselves to the Government. It follows that the P–SMBP rates are exempt from the Paperwork Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, November 1, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-25821 Filed 11-4-88; 10:27 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL-3472-2]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is:

EQL-1188-069, "Determination of Lead Concentration in Ambient; Particulate Matter by Inductively Coupled Argon Plasma Optical; Emission Spectrometry (Northern Engineering and Testing, Inc.)."

A notice of receipt of application for this method appeared in the **Federal Register**, Volume 53, August 16, 1988, on page 30866.

This method has been tested by the applicant, Northern Engineering and Testing, Inc., in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with a mixture of nitric acid and hydrochloric acid, facilitated by heat and ultrasonication. The lead content of the sample is analyzed by inductively coupled argon plasma optical emission spectrometry using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. A sample of the extract solution is nebulized to form an aerosol which is excited with high temperature argon gas produced by passing of argon through a powerful radio frequency field. Radiation emitted from the plasma enters a spectrometer where it is separated into selected wavelengths and sensed by separate photomultiplier tubes for each element of interest. The luminous energy thus measured is converted to an output signal which can be related to the concentration of each element of interest in the sample. Technical questions concerning the method should be directed to Northern Engineering and Testing, Inc., P.O. Box 30615, Billings, Montana 59107.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of section 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

Additional information concerning this action may be obtained by writing to Director, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Erich W. Bretthauer,

Acting Assistant Adminstrator for Research and Development.

[FR Doc. 88-25692 Filed 11-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3470-3]

Transfer of Data to States

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will transfer to the appropriate state environmental protection office or public health and safety office information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) in the following surveys:

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, disposal, and Recycling Facilities;
- National Survey of Hazardous Waste Generators; and
- Hazardous Waste Biennual Report Data.

EPA will transfer the data from these surveys to the state offices for use in State Capacity Assurances as required by the Superfund Amendments and Re-Authorization Act of 1986 (SARA). Some of the information may have a claim of business confidentiality.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than November 14, 1988.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The Superfund Amendments and Re-Authorization Act of 1986 (SARA) requires that each state assure the availability of hazardous waste treatment and disposal capacity to manage hazardous waste expected to be generated over the next 20 years in each state (section 104(k) of SARA).

In order to assist the states in determining the availability of treatment, storage, disposal and recycling capacity in each state for those hazardous wastes generated in that state, EPA may transfer the data from the following surveys to the appropriate state environmental protection office or public health and safety office:

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities; and
- National Survey of Hazardous Waste Generators.

Some of the information being transferred may have been claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that the state offices require access to CBI submitted to EPA under the authority of section 3007 of RCRA to conduct State Capacity Assurances as required by SARA. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to the state offices, on a need-to-know basis and upon written request, CBI collected under the authority of RCRA in the above-noted surveys.

The state officials granted access to RCRA CBI are subject to the penalties of section 3007 (b) of RCRA (42 U.S.C. 6927(b)). In accordance with 40 CFR 2.305(h), state offices must assure EPA that the interests of affected businesses will be adequately protected. The state offices will provide EPA with their security procedures for handling CBI. EPA will review and approve the security procedures of the state offices prior to RCRA CBI being transmitted to the state offices. Personnel from the state offices will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual".

Dated: October 14, 1988.

Jonathan Cannon,

Acting Assistant Administrator.

[FR Doc. 88-25689 Filed 11-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crown Cruise Line of Florida, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010845-001.

Title: Port of Palm Beach Terminal Agreement.

Parties: Port of Palm Beach District, Crown Cruise Line of Florida, Inc. (Crown).

Synopsis: The agreement provides Crown with non-exclusive, but preferential, use of Berth 14 and a portion of Berth 13 at the Port of Palm Beach for its passenger cruise operations.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 2, 1988.

[FR Doc. 88-25674 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-25; Agreement No. 217-011177]

Space Charter Agreement Between Ozean Linie GmbH and Euro-Gulf International, Inc.; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by Ozean Linie GmbH ("Ozean") requesting that the Federal Maritime Commission resolve a controversy between Ozean and Euro-Gulf International, Inc. ("Euro-Gulf") arising from the operation of a space charter agreement (FMC No. 217-011177) between Ozean and Euro-Gulf. Specifically, Ozean seeks a declaratory order from the Commission that the agreement and a space charter protocol included with the agreement, when taken together authorize Ozean to charter space on Euro-Gulf's vessels to San Juan, Puerto Rico and that such activity is exempt from the antitrust laws of the United States.

The petition has been served on Euro-Gulf and that party may file a reply to the petition with the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 on or before December 2, 1988. An original and fifteen copies shall be submitted and a copy thereof served on Nathan J. Bayer, Esq., Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005. The reply shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Participation by persons other than those named above will be permitted only upon grant of petition to intervene by the Commission pursuant to Rule 72 (46 CFR 502.72). Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25654 Filed 11-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transactions Granted Early Termination Between: 10/18/88 and 10/28/88

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN Number	Date Terminated
Kerry Co-operative Creameries Limited, Meshulam Riklis, Beatreme Food Ingredients, Inc	88-2656	10/19/88
Unisys Corporation, Convergent, Inc., Convergent, Inc	88-2717	10/19/88
ConAgra, Inc., Cook Family Foods, Ltd., Cook Family Foods, Ltd	88-2727	10/19/88

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN Number	Date Terminated
The Equitable Life Assurance Society of the U.S., Dr. Pepper Bottling Company of Texas, Dr. Pepper Bottling Company of Texas	88-2735	10/19/88
R. Stephen Rubin, Parker Pen Plc, Parker Pen Plc	89-0029	10/19/88
Grand Metropolitan Public Limited Company, The Pillsbury Company, The Pillsbury Company	89-0039	10/19/88
The News Corporation Limited, Walter H. Annenberg, Triangle Publications, Inc	88-2695	10/20/88
CoastAmerica Corporation, Jerrold L. Lavine, Powder Hill Group, Ltd., et al	89-0076	10/20/88
Kobe Steel, Ltd., Nortek, Inc., Monogram Industries, Inc. (Glastic Company Division)	88-2659	10/21/88
Cal Fed Income Partner L.P., Transamerica Corporation, Transam One and Transam Two, Limited Partnerships	89-0057	10/21/88
Bridge Oil Limited, H.R. Perot, Petrus Oil Company, L.P	89-0058	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden	89-0063	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden, Texas Air Corporation, Texas Air Corporation	89-0063	10/21/88
Blue Cross of Western Pennsylvania, Plan Investment Fund, Inc., Plan Investment Fund, Inc	89-0066	10/21/88
First Boston, Inc., CS Holding, Financiere Credit Suisse-First Boston	89-0067	10/21/88
Scandinavian Airlines System Denmark-Norway-Sweden, Texas Air Corporation, Texas Air Corporation	89-0068	10/21/88
First Boston, Inc., FBC Acquisition Corp., FBC Acquisition Corp	89-0071	10/21/88
Stifel Financial Corp., Rowland, Simon and Co., L. P., Rowland, Simon and Co., L. P	89-0072	10/21/88
Sumitomo Realty and Development Co., Ltd., Marriott Corporation, Marriott Corporation	89-0080	10/21/88
"Investing in Success" Equities PLC, Munford, Inc., Munford, Inc. and World Bazaar, Inc	89-0084	10/21/88
Kobe Steel, Ltd., Joint Venture Newco, Joint Venture Newco	89-0105	10/21/88
Gerald M. Ronson, c/o Heron International N.V., HC Properties U.S.A., Inc., HC Properties U.S.A., Inc	89-0109	10/21/88
Control Securities plc, HC Properties U.S.A., Inc., HC Properties U.S.A., Inc	89-0111	10/21/88
C. William Carey, Estate of Henry Peterson, Famous Jewelry Corporation, Custom Casting Co., Inc	88-2531	10/24/88
TI Group plc, Thermal Scientific plc, Thermal Scientific plc	88-2704	10/24/88
C. William Carey, Thomas G. Wyman, L.G. Balfour Company, Inc	88-2716	10/24/88
Alberto-Culver Company, Quintessence Holdings, Inc., Quintessence Incorporated and Vitabath, Inc	88-2746	10/25/88
Prime Computer, Inc., General Electric Company, Calma Company	89-0028	10/25/88
James River Corporation of Virginia, General Occidentale, Diamond Occidental Forest Inc	89-0034	10/25/88
McCain Inc., The Greyhound Corporation, The Dial Corporation (Ellio's Pizza Division)	89-0065	10/25/88
First Chicago Corporation, CG&T Industries, Inc., CG&T Industries, Inc	89-0070	10/25/88
"Investing in Success" Equities PLC, Tenneco Inc., TOC Retail, Inc	89-0090	10/25/88
Robert W. Plaster, Empire Gas Acquisition Corporation, Empire Gas Acquisition Corporation	88-2710	10/26/88
Marlis S.A., The News Corporation Limited, Elle Publishing, a partnership	89-0055	10/26/88
Marlis, S.A., Marlis S.A., Elle Publishing, a partnership	89-0056	10/26/88
Warburg, Pincus Capital Co., L.P. and Orion Acq. Corp., Orion Research Incorporation, Orion Research Incorporated	89-0108	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0124	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0132	10/26/88
Emhart Corporation, GardenAmerica Corporation, GardenAmerica Corporation	89-0133	10/26/88
Wingate Partners, L.P., Gerber Products Company, Gerber Furniture Group, Inc	88-2669	10/27/88
Leonard Tow, Walter K. Mickelson, Jr. and Hazel Mickelson (spouses), Mickelson Media, Inc	88-2685	10/27/88
B. C. Sugar Refinery, Ltd., Kalama Chemical, Inc., Kalama Chemical, Inc	88-2687	10/27/88
ALLTEL Corporation, Advanced Telecommunications Corporation, Advanced Telecommunications Corporation	88-2712	10/27/88
Wolverine Holding Company, Noranda Inc., Noranda Metal Industries Limited	88-2713	10/27/88
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Illinois, Inc	88-2715	10/27/88
Sears, Roebuck and Co., H.F. Holdings, Inc., Prince Kuhia Plaza	88-2741	10/27/88
Mr. Ismanto Wanandi, Arvin Industries, Inc., Arvin Industries, Inc	89-0023	10/27/88
Herbert H. Haft, Walgreen Co., Walgreen Co	89-0026	10/27/88
Aktiebolaget Electrolux, Bernard L. Milch, Washex Machinery Corporation	89-0064	10/27/88
Brierley Investments Limited, Associated Hosts, Inc., Associated Hosts, Inc	89-0088	10/27/88
Financial Holding Corporation, CalFed Inc., Beneficial Standard Life Insurance Company	89-0093	10/27/88
RPS Realty Trust, Resources Pension Shares 2, Resources Pension Shares 2	89-0120	10/27/88
International Paper Company, USG Corporation, Masonite Corporation	89-0021	10/28/88
Budget Rent a Car Corporation, E. A. Rodenberg, Jr., Alpha Transport Services, Inc	89-0022	10/28/88
123124 Canada Inc., Intamix Corporation, Intamix Corporation	89-0060	10/28/88
Compagnie de Navigation Mixte, Caulkins Indiantown Citrus Company, Caulkins Indiantown Citrus Company	89-0077	10/28/88
Daniel J. Sullivan, Anheuser-Busch Companies, Inc., Old American Pottery Company, d/b/a Old America Store	89-0083	10/28/88
Western Mining Corporation Holdings Limited, Chevron Corporation, Chevron U.S.A. Inc	89-0092	10/28/88
British Gas plc, Tenneco Inc., 13 subsidiaries	89-0097	10/28/88
Warburg, Pincus Capital Company, L.P., Magma Copper Company, Magma Copper Company	89-0107	10/28/88
RPS Realty Trust, Resources Pension Shares 1, Resources Pension Shares 1	89-0119	10/28/88
RPS Realty Trust, Integrated Resources-Resources Pension Shares 4, Integrated Resources-Resources Pension Shares 4	89-0121	10/28/88
RPS Realty Trust, Resources Pension Shares 3, Resources Pension Shares 3	89-0122	10/28/88
The Penn Central Corporation, Tegas Gas Corporation, Tejas Gas Corporation	89-0137	10/28/88
Oracle Systems Corporation, M. Dendy Young, Falcon Systems, Inc	89-0147	10/28/88
Occidential Petroleum Corporation, Tenneco Inc., Cathedral Bluffs Shale Oil Company	89-0181	10/28/88
The Prudential Insurance Company of America, Vintage Petroleum, Inc., Vintage Pipeline, Inc	89-0188	10/28/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-25702 Filed 11-4-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0306]

Salt-Cured, Air-Dried, Uneviscerated Fish; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7108/17 "Salt-Cured, Air-Dried, Uneviscerated Fish (e.g., Kapchunka)" October 27, 1988 which contains the agency's policy statement concerning the manufacture and sale of ready-to-eat, salt-cured, air-dried, uneviscerated

fish (e.g., "kapchunka"). Since 1981, this fish product has been identified as the source of botulinum toxin that caused three outbreaks of illness, with deaths. This guidance does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all relevant facts.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: FDA has issued CPG 7108.17 to set forth the agency's policy on the manufacture and sale of ready-to-eat, salt-cured, air-dried, uneviscerated fish, which may or may not have been smoked. This type of fish product is an ethnic food that is sold under various names, including "kapchunka," "rybetz," and "rostov." In this notice, this fish product will be referred to as "kapchunka."

Kapchunka is prepared by layering whole, raw, uneviscerated fish (usually whitefish) and salt in approximately at 1-to-1 ratio under weighted boards. The layered fish are allowed to cure under refrigeration for a minimum of 25 days, after which the fish are removed from the accumulated brine, rinsed, and hung at ambient temperatures to aid dry for 3 to 7 days. After drying, the fish are stored under refrigeration until distribution and sale.

Since 1981, kapchunka products manufactured in New York City by two firms have been implicated in three outbreaks of illness, with deaths, caused by botulinum toxin. In September 1981, one person in San Francisco became seriously ill from consuming kapchunka that contained botulinum toxin. A second outbreak occurred in August 1985 and resulted in the death of a New York City couple. In both of these cases, the presence of botulinum toxin was confirmed in the uneated portion of the kapchunka. Analysis of the uneated kapchunka also revealed that the salt level was too low (less than 4 percent) to preclude growth of *Clostridium botulinum* and the associated production of botulinum toxin when the fish was not refrigerated, as was the case during the air-drying phase of manufacture.

Following the 1985 outbreak of botulism, manufacture of kapchunka ceased as result of license suspensions by the State of New York and voluntary agreements with the State and FDA. Subsequently, both manufacturers made test batches using modified procedures, with close monitoring primarily by the New York State Department of Agriculture and Markets (NYAM). Very limited sale of kapchunka produced during this period was permitted, but only after anlaysis demonstrated that the aqueous phase salt concentration was high enough to preclude outgrowth of *C. botulinum*.

One of the two firms has not processed kapchunka since September 1986. The other firm, however, based on an agreement finalized in June 1987 with NYAM (countersigned by FDA), resumed commercial production in August 1987. The agreement set forth standard operating and quality control procedures that were intended to ensure the safe processing of kapchunka.

The third outbreak of botulism poisoning occurred in November 1987, less than 2 months after the resumption of commercial distribution of kapchunka. The contaminated kapchunka were traced back to the firm that entered into the June 1987 processing agreement with NYAM. In this outbreak, the agency received reports of eight illnesses, including one eventual death. These illnesses occurred in three separate incidents; One in New York City and two in Israel. (The kapchunka were transported by several consumers from New York City to Israel.)

FDA was able to test the uneaten portion of the kapchunka that was implicated in the illnesses and the death in Israel. In response to an Israeli news alert, two additional whole kapchunka were turned over to Israeli health officials and eventually to FDA for testing. FDA found the three kapchunka to be positive for botulinium toxin. In contrast to the 1981 and 1985 outbreaks, however, the salt levels in tested kapchunka were 18 to 24 percent in the aqueous phase, substantially higher than the minimum 10 percent prescribed in the June 1987 agreement.

FDA inspection of the firm that manufactured the kapchunka revealed that the actual manufacturing procedures deviated significantly from the June 1987 processing agreement. These deviations may have resulted in under-processing some fish or in temporary loss of control of a critical processing parameter, such as temperature, which may have led to production of some kapchunka contaminated with botulinum toxin.

Thus, since 1981, kapchunka contaminated with botulinum toxin have caused three outbreaks of botulism resulting in three reported deaths and numerous reported illnesses, many of which were life-threatening. The last outbreak occurred almost immediately after resumption of commercial production of kapchunka, using a revised process that was intended to correct previous deficiences.

In the United States, kapchunka is manufactured mostly from whitefish. Occurrence in fish of *C. botulinum* Type E, which was responsible for the 1985 and 1987 outbreaks, has been found to be as high at 57 percent. Uneviscerated fish present a much greater hazard than cleaned fish because the *C. botulinum* spores are particularly likely to be in the gut as a result of ingestion by the fish during feeding. The anaerobic nutrient-rich environment of the gut provides a good medium for outgrowth of the bacteria. Therefore, it is critical that uneviscerated fish be handled properly before and during curing to ensure that *C. botulinum* spores to not transform to the active growth phase resulting in multiplication of bacteria and formation of toxin. Proper handling includes uninterrupted refrigeration before and during the salt-curing step. It is critical that the salt-curing process be designed and executed so that each fish in each lot attains an aqueous phase salt level that is high enough to preclude the outgrowth of *C. botulinum* in every portion of the fish, including the viscera, before the air-drying step. Attaining an adequate salt level is critical because the subsequent air-drying step is done without refrigeration, an opportune condition for the outgrowth of *C. botulinum*.

FDA has concluded that kapchunka presents a potential life-threatening acute health hazard from botulinum toxin. There is a documented history of life-threatening health hazards associated with kapchunka. The agency believes that the combination of: (1) The presence of viscera that is likely to contain *C. botulinum* spores; (2) the difficulty in attaining sufficiently high salt levels in all portions of all fish during the salt-curing of whole fish; and (3) the ambient temperature air-drying step creates a situation that may result in the production of hazardous kapchunka with only slight errors in processing.

Further, even after the processors of kapchunka were given substantial assistance in food processing by government and academic experts, the processors have not been able to demonstrate that nonhazardous kapchunka can be produced under commercial conditions. Finally, botulinum toxin may be present in the kapchunka even though there are no

clear indications of spoilage to alert consumers to the hazard.

Because of the potential health hazard associated with ready-to-eat, salt-cured, air-dried, uneviscerated fish, which may or may not have been smoked, the agency has determined that it should make available CPG 7108.17 to alert FDA district personnel and other interested persons. The agency considers such a salt-cured, air-dried, uneviscerated fish product to be adulterated within the meaning of section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)) in that it has been prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health. The agency will consider taking regulatory action against any of this product encountered in interstate commerce.

CPG 7108.17 is intended to provide guidance to FDA's field offices for taking individual enforcement actions. This Federal Register document explains FDA's rationale for this guidance and allows the opportunity to bring to the agency's attention facts, previously unknown, that may cause the agency to reconsider this guidance.

Interested persons may submit written comments regarding CPG 7108.17 to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The CPG and any comments submitted are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85.

Dated: October 27, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25665 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-01-M

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for fiscal year 1989 for awarding grants to support clinical trials on safety and effectiveness of orphan products. FDA intends to award approximately 15 grants ranging from $20,000 to $100,000 in direct costs per annum for up to 3 years. Applications exceeding these limits may be considered nonresponsive.

DATES: There will be two closing dates. Applications must be received by January 3, 1989, or April 14, 1989. The beginning dates for awards are June 30 and September 30, 1989.

ADDRESS: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Building, Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

Note.—Applications hand-carried or commercially delivered should be addressed to Park Building, Room 3-20, 12420 Parklawn Drive, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice:

Carol A. Wetmore, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Room 15-61, Rockville, Md 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103.

I. Background

The Office of Orphan Products Development was established to identify and facilitate the availability of orphan products. Orphan products are drugs, biologics, medical devices (including in vitro diagnostics), and foods for medical purposes that meet the criteria of the Orphan Drug Act. These products may be useful in a rare disease/disorder, but most lack commercial sponsorship because they are not considered commercially attractive for marketing. A subcategory of orphan products are those marketed products in which there is evidence suggesting usefulness in a rare disease/disorder but which are not labeled for that disease/disorder because substantial evidence of safety and effectiveness for that use is lacking.

One way to make orphan products more easily available is to support research to determine whether the products are safe and effective. FDA has allowed funds to support such research since fiscal year 1983. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations promulgated thereunder.

II. Research Goals And Objectives

A. Clinical Studies

In general, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the Public Health Service Act (42 U.S.C. 262). These clinical studies may be designed to assist in the approval of unapproved products or approval of unapproved new uses for products already marketed.

Ordinarily, at least some preliminary clinical research suggesting effectiveness and relative safety should already be available. However, FDA will also consider applications concerning products for which persuasive pharmacologic evidence is available showing that a product has a reasonable possibility of being effective even though no clinical trials have yet been performed.

Applications should be for one discrete clinical trial. The applicant must provide supporting evidence that the product to be investigated is available to the applicant in the form needed for the clinical trial.

The typical study that FDA will consider for support may involve up to several dozen subjects, will be well-controlled, and will be designed to provide substantial evidence of the product's safety and effectiveness.

Because funds are limited, FDA cannot consider large research projects involving many subjects and long-term follow up.

The agency will also consider funding pharmacokinetic studies if such studies are necesary to determine safe and effective doses in subjects with serious organ disease that might affect drug disposition. However, FDA will consider pharmacokinetic studies only if they are parts of studies for determining effectiveness of a product or are proposed to obtain information about products about which there is already a significant amount of evidence showing effectiveness.

FDA's standards for adequate and well-controlled studies (21 CFR 314.126)

should be followed. In designing a well-controlled study, the investigator should especially keep in mind that historical controls or use of the subject as his or her own control is generally less desirable and reliable than active control or, when ethical, placebo controls. The applicant's proposal should provide a rationale for use of the control method chosen to satisfy consideration of scientific quality and ethical realities.

In addition to FDA's general interest in clinical studies for the safety and effectiveness of orphan products, the agency has recognized the following areas of pediatric research for which applications are encouraged.

1. Studies on marketed drugs currently approved only for adult uses which would provide data to support approving these drugs for pediatric patients.

2. Studies on nutritional products (medical foods) for management of inborn errors of metabolism for which adequate therapies are not currently available.

B. Significance

Each investigator submitting a grant application for a proposed orphan use in response to this request for applications should include a short statement explaining why preliminary evidence suggests that the product meets the objectives of the orphan products development program and why the product to be studied is an orphan product as described in the "Background" section of this notice. This statement should appear in the application under Section 2. B.—"Background and Significance."

C. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigations and clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants are expected to provide a statistical justification for the number of patients chosen for the trial based on the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

D. Journal Reference

Published reports are necessary and often critical for the review process and can help to support the investigator's research intent. Applicants should include copies of reprints of all relevant references for FDA review. This includes favorable and unfavorable reports.

III. Human Subject Protection And Informed Consent

A. Research Involving Human Subjects

Applicants should carefully review the section on human subjects on pages 4 and 5 of the instructions in the application kit. The Specific Instructions-Section 1, Item 4, Human Subjects, on pages 12 and 13 of the application kit should also be carefully reviewed for the certification of institutional review board (IRB) approval requirements. Applicants must provide information about six items described in Section 2–E of the instructions in the application kit. These six items include: The characteristics of the subjects, the sources of research materials, recruitment plans and consent procedures, any potential risks, and potential benefits to the subjects. Failure to include this information may result in deferral of the application. The goal should be to include enough information in a sufficiently clear fashion so that reviewers will not have to delay action on the application.

B. Informed Consent

Consent and/or assent forms and any additional information to be given to a subject must accompany the Grant Application Form PHS 398 (Rev. 9/86). Failure to include this information may result in deferral of the application. Information that is given to the subject or the subject's representative shall be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are as stated in the regulations at 45 CFR 36.116 and 21 CFR 50.25 as follows:

1. *Basic Elements of Informed Consent*

In seeking informed consent, the following information shall be provided to each subject:

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research' related injury to the subject.

(h) A statement that participation in voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discountinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. *Additional Elements of Informed Consent*

When appropriate, one or more of the following elements of information shall also be provided to each subject:

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue

participation will be provided to the subject.

(f) The approximate number of subjects involved in the study. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A quarterly Financial Status Report (SF–269) and program progress report are required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 30 days following each Federal fiscal quarter, except the fourth report which shall serve as the annual report and shall be due 90 days after the budget expiration date. The program staff shall advise the grantee of the suggested format at the appropriate time. A final program progress report, Financial Status Report (SF–269), and invention statement must be submitted within 90 days after the expiration date of the approved project period.

V. Mechanism of Support

A. Award Instrument

Support will be in the form of grant awards which will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to the program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act; section 351 of the Public Health Service Act; and regulations promulgated under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must exclude fees or profit from their request for support.

C. Length of Support

The length of the study will depend upon the nature of the study. FDA anticipates that a majority of the studies can be completed in 1 year. For those studies with an expected duration of more than 1 year, noncompetitive continuation of support beyond the first year will depend on (1) performance during the preceding year, and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Applications will be funded by priority score. However, priority may be given to those applications for studies of the following:

1. Products for rare diseases/disorders.

2. Products for rare disease/disorders where there is no current therapy.

3. Products for rare disease/disorders which would improve the current treatment/therapy.

4. Products for rare diseases/disorders which are currently at a later phase of clinical study.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this request for applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field of the specific application. The applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first-level reviewers.

In addition, applications will be reviewed before issuance of an FDA grant award to ensure to the extent practicable that proposed studies are consistent with requirements for investigations and marketing approval under the act and the Public Health Service Act. This would include a review to ascertain whether an investigational new drug (IND) application or an investigational device exemption (IDE) could be obtained (where applicable).

B. Review Criteria

Applications will be reviewed according to the following criteria:

1. Responsiveness to this request for applications with specific emphasis on:

(a) Whether the product is an orphan product whose development and marketing will likely not be profitable.

(b) Whether the proposal contains one discrete clinical trial.

(c) Whether there is supporting evidence that the product is available to the applicant in the form needed for the investigation.

(d) Whether the product is subject to premarket approval by FDA.

(e) Whether the proposed study can be completed within the budget and time limitations as stated in this request for applications.

2. The soundness of the rationale for the proposed study.

3. The appropriateness and quality of the study design.

4. The adequacy of the evidence that the proposed number of subjects can be recruited and the study completed during the proposed project period.

5. The qualifications of the investigator and support staff and resources available to them.

6. The request for financial support is adequately justified and fully documented.

7. The adequacy of plans for complying with regulations for protection of human and animal subjects.

Applications must be responsive to this request for applications. Applications that are judged to be nonresponsive will be returned to the applicant.

VII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/86), with sufficient copies of all reprints critical to the review, should be delivered to Robert L. Robins (address above).

The requirement for certification of IRB approval for studies involving the use of human subjects must show the IRB Approval Date (Item 4a) and the Assurance of Compliance number (Item 4b.) on the face page of the application.

A short statement of why the product is appropriate to the objectives of the Orphan Products Grants Program should appear in the application under Section 2. B.—"Background and Significance."

The outside of the mailing package and the top of the application face page should be labeled "Response to FRA–FDA–OP–89–1."

VIII. Method of Application

A Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date(s).

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will

not be considered for funding and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Services does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/86). The face page of the application must reflect the request for applications number, FRA–FDA–OP–1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: September 29, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25663 Filed 11–4–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–258L]

Prescription Drug Marketing Act of 1987; Supplemental Letter Setting Forth Agency Policies; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter to industry on the Prescription Drug Marketing Act of 1987, which supplements a letter previously issued by FDA on August 1, 1988. The letter clarifies agency policy on returns of prescription drugs to wholesalers for reasons of mistake in ordering or delivering these drugs. The agency is soliciting comments on implementation of the new law and its interpretive letters, and plans to initiate rulemaking proceedings.

DATE: Written comments by December 7, 1988.

ADDRESSES: Written requests for copies of this letter to the Division of Regulatory Affairs (HFD–360), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Division in processing your reuqests.) Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Richard L. Arkin,
or
Sally Maher, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On August 1, 1988, FDA issued a letter to regulated industry and other interested persons regarding the Prescription Drug Marketing Act of 1987. (See the **Federal Register** of August 8, 1988 (53 FR 29776).) That letter provided general information and guidance to aid industry in complying with the new law. Since the letter was issued, the agency has received numerous comments regarding the return of drug products from a hospital or health care entity to the wholesale distributor.

The new law amended section 503 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353) to prohibit, with certain exemptions, the sale, purchase, or trade (and the offer to sell, purchase, or trade) of prescription drugs by a hospital or health care entity; or the sale, purchase, or trade of prescription drugs donated or sold at reduced cost to charitable institutions operating under section 501(c)(3) of the Internal Revenue Code of 1954 (except for a sale to a nonprofit affiliate of the charitable institution).

The August 1, 1988, letter did not discuss the return of goods to wholesale distributors delivered due to errors made either in placing or in processing orders for prescription drugs. This letter is intended to provide guidance on this issue. Under FDA's new policy, returns made to the wholesale distributor within 10 working days will be exempted from the prohibition of the sale or trade of pharmaceuticals provided that the manufacturer is notified of the return in writing.

The information in this letter and the August 1, 1988, letter may be relied upon with assurance of its acceptability to FDA. The letter, however, does not state legal requirements beyond those found in the statute and existing regulations. Nor does the letter bind FDA should events occur prior to the issuance of a final rule that require a change in FDA policy. Changes in FDA policy will be announced in future letters or notices.

Interested persons may, on or before December 7, 1988, submit to the Dockets Management Branch (address above) written comments regarding implementation of the new law and the information in the letter. Comments should be identified with the docket number found in the heading of this document and on the cover page of the letter, and should be submitted in duplicate, except that individuals may submit one copy. Received comments and other information on this topic may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

Dated: November 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25693 Filed 11–2–88; 3:10 pm]

BILLING CODE 4160–01–M

Public Health Service

Change in Assessment Policy Applicable to Hill-Burton Assisted Facilities' Uncompensated Services Programs

AGENCY: Health Resources and Services Administration (HRSA), PHS, DHHS.

ACTION: Notice.

SUMMARY: This notice announces a change in the Department's approach to assessing the compliance of facilities that receive assistance under Titles VI and XVI of the Public Health Service Act with the uncompensated services assurance which was given as a condition of that assistance. The new approach implements a change in the Department's interpretation of the implementing regulations regarding the effect of noncompliance with the timing requirement for eligibility determinations on the creditability of accounts towards the quota of uncompensated services an assisted facility is required to provide. Under the new interpretation, services provided where an eligibility determination was not made within two working days of a

request for uncompensated services may be credited towards satisfying an assisted facility's uncompensated services obligation, as long as all other applicable requirements for credit are met. Assessment procedures have been developed to implement this change for facilities which have been previously assessed, as well as prospectively.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Written inquiries should be directed to the Division of Facilities Compliance, HRSA, DHHS, 5600 Fishers Lane, Room 11–25, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Charlotte Pascoe, 301–443–5656.

SUPPLEMENTARY INFORMATION: In 1979, the Department of Health and Human Services issued regulations substantially revising the standards for compliance by medical facilities that received assistance under Title VI and Title XVI of the Public Health Service Act (popularly known as the "Hill-Burton" program) with their assurance that they would provide uncompensated services to persons unable to pay therefor. This assurance is now commonly known as the "uncompensated services" assurance, and the regulations implementing it are codified at CFR Part 124, Subpart F. The 1979 regulations required, among other things, that facilities must make determinations of an individual's eligibility for uncompensated services within two working days of a request for such services. Based on this, on related sections of the regulations, and on the case law preceding their adoption, the Department has interpreted the 1979 regulations as not allowing a facility to receive credit toward its Hill-Burton obligation for accounts for which this timing requirement was not met. Pursuant to this interpretation, the Department has, from May, 1979 to the present, consistently disallowed credit for such noncompliance in its assessments of facilities' uncompensated services accounts. For the reasons described below, the Department has now decided to change its policy with respect to this issue.

The interpretation underlying the policy of disallowing for noncompliance with the two-working-day requirement was originally adopted for two reasons. First, the policy underlying the 1979 regulations, as expressed in the preamble to those regulations, was that there should be a disincentive to noncompliance with the regulations. This policy was embodied both in the enforcement provisions of the regulations (42 CFR 124.511) and in the definition of "uncompensated services" in 42 CFR 124.502, which explicitly provided that services for which an eligibility determination was not made were not "uncompensated services" within the meaning of the regulations. Thus, disallowance of accounts where the two-working-day requirement was not met created a substantial incentive for compliance with the requirement, as the effect of the disallowance was, typically, to create a deficit in the amount the facility claimed it had provided towards its Hill-Burton obligation. Second, the Department viewed the decision in *Corum* v. *Beth Israel Medical Center*, 373 F. Supp. 550 (S.D.N.Y., 1974) as requiring disallowance of services for which the timing requirement was not met, as the court in that case had ruled that accounts for which a prior determination of eligibility had not been made could not be considered uncompensated services under the statute. The regulatory "prior determination" requirement adopted in response to that decision evolved, in the 1979 regulations, into the two-working-day requirement.

Two events have caused the Department to revise its prior interpretation. First, on December 3, 1987, the Department issued regulations that, among other things, substantially revised both the timing requirements for eligibility determinations and the enforcement scheme. 52 FR 46022. The timing requirements were more finely tuned to reflect the different need for timeliness inherent in various types of situations, and thus were substantially relaxed for requests made after service is provided and requests for nursing home services. See 42 CFR 124.507 (as in effect on February 1, 1988). The enforcement scheme, which had previously relied principally on the uneven compliance incentives created by disallowance of individual accounts for certain types of procedural noncompliance, was also changed to provide for clearer notice to facilities of compliance problems with their uncompensated services programs, a clearer enforcement focus on the most important programmatic aspects of compliance, clearer authority for the prescription of corrective actions, and a far stronger incentive for complying with the required corrective actions than previously existed. See 42 CFR 124.512 (as in effect on February 1, 1988). As a result of these changes, the issue of future compliance by facilities with the two-working-day requirement was rendered moot for most purposes, while, to the extent the requirement remains, an improved enforcement mechanism exists for assuring compliance with it.

The second event was the decision, on August 3, 1988, by the District Court for the District of Minnesota holding invalid the Department's interpretation of its regulations as requiring disallowance of accounts where the two-working-day requirement was not met but eligibility determinations were otherwise made. The basis for the court's holding was its conclusion that the Department's interpretation is not reflected in the regulatory definition of "uncompensated services," is not required by the *Corum* decision, and is otherwise not provided for by the regulations. *Douglas County, Minnesota, d/b/a Douglas County Hospital, et al. v. Bowen*, No. 6–85–1078 (D. Minn., August 3, 1988). While the court's order in this case applies only to the plaintiff hospital and is binding on the Department only in Minnesota, the Department is of the view that the regulatory interpretation adopted by the court is reasonable. This together with the obvious desirability of consistency in national assessment standards and the changes in compliance standards and incentives created by the revision of the regulations, has led the Department to revise its interpretation of the 1979 regulatory provisions. The new interpretation permits crediting towards a facility's Hill-Burton obligation, during the period for which the 1979 regulations applied to the facility, accounts in which an eligibility determination was made but the two-working-day requirement was not met.

Thus, in performing assessments of assisted facilities for this period, the following procedures and policies will apply:

(1) Facilities Which Have Never Been Assessed

Assessments will be conducted pursuant to the Transition Certification Process (TCP) provided for by 42 CFR 124.511(b)(2) (as in effect on February 1, 1988), with credit being given in accordance with the pre-existing assessment standards, except that credit will not be denied where the sole basis for disallowance would be noncompliance with the two-working-day requirement of 42 CFR 124.508(a) (as in effect on January 31, 1988).

(2) Facilities Which Have Received Transition Certification Process Assessments

TCP certifications will be revised to conform to the policy set out in the preceding paragraph. Facilities that have already received a certification letter and have a remaining obligation will be sent a follow-up letter revising, where applicable, the amount certified

for the period assessed and the corrective action required.

(3) Facilities With Outstanding Obligations Assessed Prior to the Transition Certification Process

Where an assisted facility was assessed before the initation of the TCP and the facility has a remaining Hill-Burton obligation, the prior assessment data will be reviewed. The Department estimates that in most cases it will be able to determine, because of the way the data was recorded, how much, if any, of any disallowance was due solely to noncompliance with the two-working-day requirement. Where this can be determined based on the prior assessment reports, an appropriate credit will be given and the facility will be advised of the revision in its Hill-Burton obligation. Where the Department's records do not enable it to determine the amount of disallowance due to noncompliance with the two-working-day requirement, the facility will be offered the option of receiving a new assessment under the TCP process for the entire period; if the number of ambiguous accounts is small, the facility may also be offered the option of submitting the necessary documentation for those accounts. If the facility is unable or unwilling to produce documentation for any period previously assessed for which additional documentation is requested, the amount of credit previously established for that period will stand.

Date: October 3, 1988.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 88-25662 Filed 11-4-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-09-4120-10]

Coal Management Program; San Juan River Federal Coal Production Region

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice cancelling the San Juan River Federal Coal Production Region and opening the seventeen-county area to lease-by-application.

SUMMARY: On November 9, 1979, the BLM established the San Juan River Federal Coal Production Region for the management of federally owned coal (44 FR 65196-65197). Subsequent assessments indicate that industry interest, based on mining conditions and constrained markets for the region's coal, no longer justifies the Federally initiated coal lease sale program procedures of 43 CFR Part 3420. In accordance with 43 CFR 3400.5, this notice cancels the San Juan River Federal Coal Production Region, allowing the region to lease coal under the lease-by-application process described at 43 CFR Part 3425 (Leasing on Application).

EFFECTIVE DATE: December 7, 1988.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504. Mr. Jentgen may be reached by telephone at (505) 476-6109 or FTS 476-6109.

SUPPLEMENTARY INFORMATION: The San Juan River Federal Coal Production Region was established by the BLM on November 9, 1979, together with a number of other regions, to implement competitive coal leasing under regulations contained in 43 CFR Part 3420. The San Juan River Region includes the following counties:

New Mexico

Bernalillo	Rio Arriba
Catron	Sandoval
Cibola	San Juan
Lincoln	Santa Fe
Los Alamos	Socorro
McKinley	Valencia

Colorado

Archuleta	Montezuma
Dolores	San Juan
La Plata	

A regional coal environmental impact statement (EIS) that studies several possible regional coal sale tracts was prepared for the San Juan Basin portion of the region in 1984. A regional coal sale, however, was never held, as industry demand for coal from the San Juan Basin has waned since the regional EIS was first begun. The only competitive coal leasing in the region since 1979 has been done using the emergency lease procedures under 43 CFR Part 3425. The continued lack of significant industry interest in Federal coal in the region has led the San Juan River RCT to examine whether the regional coal activity planning process should be replaced by lease-by-application procedures.

At its meetings in November 1987 and August 8, 1988, the RCT discussed region coal markets, industry demand for Federal coal and other related factors that might affect an RCT recommendation on the mode of leasing for the region. Based on the information presented at these meetings, the RCT concluded that sufficient minable coal resources are available in the region to meet industry's needs in the near-term. Consequently, the RCT recommended that the region should be decertified and that lease-by-application procedures should be implemented to more efficiently and effectively handle the limited demand for Federal coal resources over the next few years. The RCT further proposed that, if the San Juan River Federal Coal Production Region is decertified, the RCT should continue to closely monitor the region's leasing activity and reexamine the leasing mode where certain thresholds are exceeded. The thresholds adopted by the RCT that would indicate the need for an RCT meeting are:

- The receipt of two or more applications for Federal coal leases in a calendar year, or
- A single application for 15 percent or more of the total recoverable Federal coal under lease in the region.

The Governors of New Mexico and Colorado were provided with an opportunity to comment on the RCT's recommendation to decertify the region and to implement lease-by-application procedures. The Governor of Colorado provided written support for the RCT recommendation. No written response was received from the Governor of New Mexico.

The expected benefits of using lease-by-application procedures in lieu of regional activity planning are a substantial savings in administrative costs to both the Federal Government and the States of New Mexico and Colorado, while retaining a responsive leasing process for the coal industry. No additional social, economic, or environmental impacts are anticipated as a result of this change in the method of leasing.

In accordance with 43 CFR 3400.5, this notice is to advise the pubic that the San Juan River Federal Coal Production Region is cancelled, thereby declaring that the Federal coal reserves in those countries of New Mexico and Colorado listed above will be leased under 43 CFR Part 3425 (Lease-by-Application), rather than under 43 CFR 3420.3 through 3420.6.

Applications under 43 CFR 3425.1-5 shall be accepted by the BLM to lease Federal coal in the seventeen counties named above. Three copies of the application shall be filed in the Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504 (for applications in New Mexico), or the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215 (for applications in Colorado).

Supporting information on Federal coal reserve areas is available for public inspection at the Bureau of Land Management, Albuquerque District Office, Rio Puerco Resource Area Office, 435 Montano Road NE, Albuquerque, New Mexico 87107 (for all reserve areas in New Mexico); Bureau of Land Management, Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401 (for San Juan Basin/Gallup areas); Bureau of Land Management, Socorro Resource area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801 (for San Augustine/Fence Lake areas); or Bureau of Land Management, San Juan/San Miguel Resource Area Office, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301 (for northern San/Juan Basin areas).

Dated: November 1, 1988.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 88-25671 Filed 11-4-88; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Non-wage Cash Payments Supplement to the Current Employment Statistics Survey.

BLS form	Affected public	Respondents	Frequency	Average time per response
BLS-790 SUP	Business or other for profit; non-profit institutions; small businesses or organizations	3,200	One-time	8 minutes.
BLS-790 SUP CATI	Business or other for profit; non-profit institutions; small businesses or organizations	900	One-time	10 minutes.
BLS-790 SUP RAS	Business or other for profit; non-profit institutions; small businesses or organizations	360	One-time	7 minutes.

The non-wage cash payments supplement is a pilot test to determine the incidence and collectability of non-wage cash payments to employees. The results will indicate whether a supplement is feasible across the entire CES survey as a means to produce a regular annual all cash compensation series.

Revision

Employment and Training Administration

Business Confidential Data Request
1205-0197; ETA 9014
On Occasion
Businesses or other for-profit; Small businesses or organizations
1,162 respondents; 11,625 burden hours; 1 form; 10 hours per response
Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

Extension

Mine Safety and Health Administration

Escapeways and Escape Facilities
1219-0052
Weekly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 1 hour per response; 153,041 total burden hours
Requires operators of underground coal mines to keep records of the results of weekly examinations of emergency escapeways.

Extension

Bureau of Labor Statistics

U.S. Export Product information

1220–0025

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 2894B	Small, Medium and Large Business Firms	1,500	Annual	45 minutes.
BLS 3008	Small, Medium and Large Business Firms	1,500	Annual	15 minutes.
BLS 2894C	Small, Medium and Large Business Firms	6,885	Quarterly	23.4 minutes.

9,901 total hours

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product.

1220–0026

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 3007B	Small, Medium and Large Business Firms	1,550	Annual	45 minutes.
BLS 3008	Small, Medium and Large Business Firms	1,550	Annual	25 minutes.
BLS 3007C	Small, Medium and Large Business Firms	7,395	Quarterly	25.2 minutes.
BLS 3007E	Small, Medium and Large Business Firms	50	Quarterly	25.2 minutes.

14,058 total hours

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product.

Labor Force Questionnaire—CPS–1

Monthly 1220–0100
Individuals and households
Survey universe is 53,000 households
Respondent burden is estimated at approximately 73,500 hours
The labor force questionnaire (CPS–1) contains all the questions used to obtain the monthly information on the labor force status of the population. The most important use of the information is to determine the month-to-month changes in total employment and in the jobless rate and to see how these affect the various components of the population.

Reinstatement

Employment Standards Administration

Homeworker Handbook
1215–0013; WH–75
On occasion
Individuals or households; Businesses or other for-profit; Nonprofit institutions; Small businesses or other organizations
6,600 respondents; 13,420 total hours; ½ hour per response; 1 form
The Homeworker Handbook provides information on hours worked and wages paid to homeworkers covered by the Fair Labor Standards Act. The handbook is used to help insure that such workers receive the minimum and overtime wages to which they are entitled.

Signed at Washington, DC, this 1st day of November 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–25642 Filed 11–4–88; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.K. Guthrie Drilling, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.K. Guthrie Drilling (Workers)	Big Spring, TX	10/24/88	10/11/88	21,391	Oil & Gas.
Acid Engineers, Inc. (Workers)	Denver City, TX	10/24/88	9/9/88	21,392	Do.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Acid Engineers, Inc. (Workers)	Andrews, TX	10/24/88	9/9/88	21,393	Do.
Alloy Ball & Seat Co., (Workers)	Corpus, Christi, TX	10/24/88	10/7/88	21,394	Do.
Alloy Tek, Inc., Dept. 124 (UAW)	Grandville, MI	10/24/88	10/7/88	21,395	Steel.
Amazon Technologies, Inc. (Workers)	Longmont, CO	10/24/88	9/26/88	21,396	Drilling Fluid Chemicals.
Arco Oil & Gas Co. (Workers)	Houston, TX	10/24/88	9/13/88	21,397	Oil & Gas.
Armstrong Drilling, Inc. (Company)	Wooster, OH	10/24/88	10/10/88	21,398	Do.
Bomac/Grace Drilling Co. (Workers)	Williston, MD	10/24/88	10/12/88	21,399	Do.
Browder Electric Service Co. (Company)	Big Lake, TX	10/24/88	10/4/88	21,400	Do.
Burgener Services, Inc. (Company)	Olney, IL	10/24/88	10/6/88	2,1401	Do.
C.D. Turner Oil Operator (Workers)	Big Spring, TX	10/24/88	10/6/88	21,402	Do.
Century Data, Inc. (ACTWU)	Anaheim, CA	10/24/88	10/7/88	21,403	Disk Drives.
Chromalloy Drilling Fluids (Workers)	Laredo, TX	10/24/88	10/4/88	21,404	Drilling Chemicals.
Consolidation Coal Co. Robinson Run Mine (UMW).	Fairmont, WV	10/24/88	9/26/88	21,405	Coal.
Core Laboratories, Inc. (Workers)	Dallas, TX	10/24/88	10/14/88	21,406	Oil & Gas.
D&S Industries, Inc. (Workers)	Carthage, TX	10/24/88	10/6/88	21,407	Do.
Diamond M. Drilling, Co. (Workers)	Houston, TX	10/24/88	10/4/88	21,408	Do.
Don Knapp Oil Production (Workers)	Oxford, KS	10/24/88	10/7/88	21,409	Do.
Dranetz Technology, Inc. (Company)	Edison, NJ	10/24/88	9/30/88	21,410	Testing Equipment.
Drilex Systems, Inc. (Workers)	Casper, WY	10/24/88	10/11/88	21,411	Oil & Gas.
Dual Drilling (Workers)	Dallas, TX	10/24/88	10/11/88	21,412	Do.
Dwight Brehm Resources (Workers)	Mt. Vernon, IL	10/24/88	10/13/88	21,413	Do.
Emerald Corp. (Workers)	Denver, CO	10/24/88	10/7/88	21,414	Do.
Emhart Industries-Hardware Div. (Company)	Berlin, CT	10/24/88	10/3/88	21,415	Locks.
Endevco, Inc. (Workers)	Dallas, TX	10/24/88	10/7/88	21,416	Oil & Gas.
Energy Sources, Inc. (Workers)	Lubbock, TX	10/24/88	10/10/88	21,417	Do.
Exeter Drilling Co. (Workers)	Midland, TX	10/24/88	10/3/88	21,418	Do.
Explore Seismic Drilling Inc. (Workers)	Hessmer, LA	10/24/88	10/14/88	31,419	Do.
Fiberglass Systems (Workers)	Big Spring, TX	10/24/88	10/12/88	21,420	Do.
Flvor Drillin Services, Inc. (Workers)	New Orleans, LA	10/24/88	10/13/88	22,421	Do.
Four Flags Drilling Co. Inc. (Workers)	Valley Forge, PA	10/24/88	9/20/88	21,422	Do.
Four Square Excavating Co. (Company)	Carmi, IL	10/24/88	10/7/88	21,423	Do.
G&E Siemens (Workers)	El Paso, TX	10/24/88	9/30/88	21,424	Telecommunication Transmission Systems.
Gas Company of New Mexico-Permian Pipeline Div. (Workers).	Artesia, NM	10/24/88	10/6/88	21,425	Oil & Gas.
General Electric Consumer Products (Company)	Ocean, NJ	10/24/88	9/27/88	21,426	Household Applicances.
Geo. N. Mitchell Drilling Co., Inc. (Workers)	Carmi, IL	10/24/88	10/4/88	21,427	Oil & Gas.
Great North Oil Corp. (Company)	Giddings, TX	10/24/88	10/9/88	21,428	Do.
Guadalupe Oil & Gas Co. (Workers)	Victoria, TX	10/24/88	9/30/88	21,429	Do.
Gulf and Western Oil Corp. (Company)	San Antonio, TX	10/24/88	9/29/88	21,430	Do.
Harold Krueger Co. (Company)	Natoma, KS	10/24/88	10/12/88	21,431	Do.
Health-Tex (ACTWU)	Guin, AL	10/24/88	10/7/88	21,432	Children's Sportswear
Hillside Equities, (Company)	San Antonio, TX	10/24/88	10/5/88	21,433	Oil & Gas.
Howell Drilling, Inc. (Workers)	San Antonio, TX	10/24/88	9/30/88	21,434	Do.
Hughes Texas Petroleum (Company)	Beeville, TX	10/24/88	9/19/88	21,435	Do.
Huthnance Offshore Drilling Co. (Workers)	New Iberia, LA	10/24/88	10/10/88	21,436	Do.
J.F.P Energy Inc. (Company)	Houston, TX	10/24/88	10/5/88	21,437	Do.
J.F.P Offshore, Inc. (Company)	Houston, TX	10/24/88	10/5/88	21,438	Do.
Jack/Wade Drilling, Inc. (Workers)	Lafayette, LA	10/24/88	10/7/88	21,439	Do.
Jeansville Corp. (ILGWU)	Orangeburg, SC	10/24/88	10/7/88	21,440	Ladies' Jeans.
Jet Oilfield Rental, Inc. (Company)	Dickinson, ND	10/24/88	9/12/88	21,441	Oil & Gas.
Joy Manufacturing (Workers)	Wichita Falls, TX	10/24/88	10/11/88	21,442	Do.
Knox Corder Drilling Co. (Workers)	Devine, TX	10/24/88	10/11/88	21,443	Do.
Landis Drilling (Workers)	Midland, TX	10/24/88	10/3/88	21,444	Do.
Loffland Brothers, Co. (Workers)	New Braunfels, TX	10/24/88	8/28/88	21,445	Do.
MI Drilling Fluids (Workers)	Williston, ND	10/24/88	9/30/88	21,446	Do.
M.L. Manfield Co. (Workers)	Eunice, LA	10/24/88	10/11/88	21,447	Do.
Marathon Letourneau (Workers)	Brownsville, TX	10/24/88	10/17/88	21,448	Do.
Marlin Drilling Co. Inc. (Company)	Houston, TX	10/24/88	10/10/88	21,449	Do.
Marlin Drilling Co., Inc. (Company)	Lafayette, LA	10/24/88	10/10/88	21,450	Do.
Marlin West Drilling Co. (Company)	Bakersfield, CA	10/24/88	10/10/88	21,451	Do.
Marine Drilling Co. (Workers)	Corpus Christi, TX	10/24/88	9/30/88	21,452	Do.
Maverick Drilling Co. Inc. (Workers)	Austin, TX	10/24/88	10/15/88	21,453	Do.
Meridian Oil Inc. (Workers)	Billings, MT	10/24/88	9/30/88	21,454	Do.
Metro Well Service Corp. (Workers)	Deville, LA	10/24/88	9/29/88	21,455	Do.
Mid-America Petroleum Inc. (Workers)	Midland, TX	10/24/88	10/27/88	21,456	Do.
Mindard Run Oil Co. (Workers)	Bradford, PA	10/24/88	9/30/88	21,457	Do.
Mobil Producing Texas & New Mexico (Workers)	Houston, TX	10/24/88	9/17/88	21,458	Do.
Moran Corporation (Company)	Houston, TX	10/24/88	10/3/88	21,459	Do.
NL Baroid (Workers)	Laredo, TX	10/24/88	10/11/88	21,460	Do.
Navarro Waterflood Co. (Workers)	Corsicana, TX	10/24/88	10/12/88	21,461	Do.
Newmont Oil Co. (Workers)	Houston, TX	10/24/88	10/14/88	21,462	Do.
Otis Engineering Corp. (Workers)	Carollton, TX	10/24/88	10/5/88	21,463	Do.
Parker Drilling Co. Gulf Coast Div. (Company)	Tulsa, OK	10/24/88	10/3/88	21,464	Do.
Penrod Drilling Corp. (Company)	Dallas, TX	10/24/88	10/3/88	21,465	Do.
Peterson Drilling Co. (Workers)	Lovington, NM	10/24/88	10/3/88	21,466	Do.
Pitman Moore, Inc. (Company)	Washington Crossing, NJ.	10/24/88	10/11/88	21,467	Pharmaceutical Products.
Power Rig Drilling Co. (Company)	Lafayette, LA	10/24/88	9/21/88	21,468	Oil & Gas.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Prairie Energy, Inc. (Workers)	Minot, ND	10/24/88	10/10/88	21,469	Do.
Precision Exploration Co., Inc. (Workers)	Olney, IL	10/24/88	10/5/88	21,470	Do.
Precision Lease Service, Inc. (Workers)	Carrizo Spring, TX	10/24/88	9/25/88	21,471	Do.
Premium Casing & Tubing Inspection, Co. (Company).	Midland, TX	10/24/88	10/10/88	21,472	Do.
Pride Oil Well Service (Workers)	Kilgore, TX	10/24/88	9/22/88	21,473	Do.
Roth American Co. (Company)	Wilkes-Barre, PA	10/24/88	10/14/88	21,474	Toys.
Saidem Drilling Co. (Workers)	Midland, TX	10/24/88	10/7/88	21,475	Oil & Gas.
Sage Drilling Co., Inc. (Workers)	Wichita, KS	10/24/88	10/6/88	21,476	Do.
Service Acid, Inc. (Workers)	Hays, KS	10/24/88	10/3/88	21,477	Do.
Southland Chemical Corp. (Workers)	Great Meadows, NJ	10/24/88	10/5/88	21,478	Custom Chemicals.
Stroube Oil Co. (Workers)	Corsicana, TX	10/24/88	10/12/88	21,479	Oil & Gas.
Sturgis Newport Business Forms (Workers)	Sturgis, MI	10/24/88	10/1/88	21,480	Sales Books & Receipt Books.
TRW Seat Belt Div. (Workers)	McAllen, TX	10/24/88	10/12/88	21,481	Seat Belts.
Terra Resources, Inc. (Workers)	Casper, WY	10/24/88	10/7/88	21,482	Oil & Gas.
(The) Louisiana Land & Exploration Co. (Workers).	New Orleans, LA	10/24/88	10/5/88	21,483	Do.
(The) Louisiana Land & Exploration Co. (Workers).	Oklahoma City, OK	10/24/88	10/5/88	21,484	Do.
(The) Louisiana Land & Exploration Co. (South Louisiana Div.) (Workers).	New Orleans, LA	10/24/88	10/5/88	21,485	Do.
(The) Louisiana Land & Exploration Co. (Southeastern Dist. (Workers).	New Orleans, LA	10/24/88	10/5/88	21,486	Do.
Tower Drilling Co. (Company)	Northglenn, CO	10/24/88	10/5/88	21,487	Do.
Trident Oilfield Service & Const. Co. (Workers)	Olney, IL	10/24/88	10/6/88	21,488	Do.
Universal Equipment, Inc. (Company)	Lafayette, LA	10/24/88	10/13/88	21,489	Do.
Universal Resources Corp. (Workers)	Denver, CO	10/24/88	10/7/88	21,490	Do.
Utex Industries, Inc. (Company)	Houston, TX	10/24/88	10/10/88	21,491	Do.
Utex Industries, Inc. (Company)	Weimer, TX	10/24/88	10/10/88	21,492	Do.
United Energex, Inc. (Workers)	Cisco, TX	10/24/88	10/4/88	21,493	Do.
Vetco Gray, Inc. (Workers)	Ventura, CA	10/24/88	10/11/88	21,494	Do.
Viking Drilling Fluids	Littleton, CO	10/24/88	9/28/88	21,495	Do.
Von R. Frierson, Inc. (Company)	Houston, TX	10/24/88	10/7/88	21,496	Do.
W.L. Kreider's Sons Mfg. Co., Inc. (Workers)	Palmyra, PA	10/24/88	10/12/88	21,497	Men's-Women's & Children's Footwear.
Walker International (ACTWU)	Detroit, MI	10/24/88	10/7/88	21,498	Fishing Rods.
Ware-Knitters, Inc. (Workers)	Calais, ME	10/24/88	10/7/88	21,499	Children's Sportswear.
Well Tech, Inc. (Workers)	Houston, TX	10/24/88	10/10/88	21,500	Oil & Gas.
Young Exploration Co. (Workers)	Oklahoma City, OK	10/24/88	9/26/88	21,501	Do.
Zapata Offshore Co. (Workers)	Houston, TX	10/24/88	10/8/88	21,502	Do.
Zwicker Knitting Mills (ILGWU)	Appleton, WI	10/24/88	10/13/88	21,503	Knitted Accessories.
Zwicker Knitting Mills (ILGWU)	Waupaca, WI	10/24/88	10/13/88	21,504	Knitted Accessories.

[FR Doc. 88-25687 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,910]

Amistad Fuel Co., Rockwood, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers of Amistad Fuel Company, Rockwood, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,910; Amistad Fuel Company, Rockwood, Texas (October 20, 1988).

Signed at Washington, DC, this 25th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25647 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; George Ann Fashions Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 3, 1988–October 7, 1988 and October 11, 1988–October 21, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20, 829; George Ann Fashions Co., Swoyersville, PA

TA-W-20, 846; Iselle Mfg. Co., Inc., Philadelphia, PA

TA–W–20, 863; Silly Products, Corona, NY

TA–W–20, 871; Magnetek Universal Mfg, Paterson, NJ

TA–W–20, 902; Mount Vernon Mills, Inc., Fries, VA

TA–W–20, 886; F.H. Lawson Co., Cincinnati, OH

TA–W–20, 890; Reliance Button Co., Inc., New York, NY

TA–W–20, 883; Electronic Molding Corp., Woonsocket, RI

TA–W–20, 884; Precision Automatic Corp., Woonsocket, RI

TA–W–20, Wrapex Corp., Woonsocket, RI

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20, 865; Sumitomo Machinery Corp., Teterboro, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20, 866; Atlantic Fuel Marketing Corp., Montvale, NJ

The workers' form does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20, 867; Biolectron, Inc., Hackensack, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20, 900; Ketchem Distributors, Inc., Cranford, NJ

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20, 857; Gain Electronics, Somerville, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20, 877; Reichhold Chemicals, Inc., Ferndale, MI

U.S. imports of alkyd resins are negligible.

TA–W–20, 946; Fishers Big Wheel, Ellwood City, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20, 954; MND Drilling Corp., Southern Div., Magnolia, TX

Ineligible for retroactive provisions because of one year rule under the Omnibus Trade & Competitiveness Act.

TA–W–20, 955; MND Drilling Corp., Northern Div., Bridgeport, TX

Ineligible for retroactive provisions because of one year rule under the Omnibus Trade & Competitiveness Act.

TA–W–20, 889; Jack Cooper Transport Co., Arlington, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20, 924; Nikki Sportswear, Long Branch, NJ

The investigation revealed that criterion (1) has not been met. Employment did not declined during the relevant period as required for certification.

Affirmative Determinations

TA–W–20, 953; International Shoe Co., Marshall, MO

A certification was issued covering all workers separated on or after September 30, 1987.

TA–W–20, 881; Beehive International Salt Lake, UT

A certification was issued covering all workers separated on or after August 9, 1987.

TA–W–20, 862; Phillips Petroleum, Eastern Div., Houston, TX

A certification was issued covering all workers separated on or after August 2, 1987.

TA–W–20, 875; Phillips Petroleum Western Div., Denver, CO

A certification was issued covering all workers separated on or after August 2, 1987.

TA–W–21, 028; Red Tiger Drilling Co., Rig #9, Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA–W–20, 944; Dot Togs, Inc., Rockland, MA

A certification was issued covering all workers separated on or after August 31, 1987 and before September 30, 1988.

TA–W–20, 887; ITT Power Systems Corp., Galion, OH

A certification was issued covering all workers separated on or after August 8, 1987.

TA–W–20, 919; International Shoe Co., Broadway, Lemp & Cherokee Streets, St. Louis, MO

A certification was issued covering all workers at Broadway, Lemp & Cherokee Streets engaged in support services operation separated on or after August 23, 1987.

TA–W–20, 872; N&J Originals, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after July 29, 1987 and before August 6, 1988.

TA–W–20, 870; M&D Coat Co., Hoboken, NJ

A certification was issued covering all workers separated on or after July 27, 1987.

TA–W–20, 874; PVS Chemicals, Inc., Copley, OH

A certification was issued covering all workers separated on or after August 3, 1987.

TA–W–20, Universal Optical Co., Beta Optical Co., Inc., North Attleboro, MA

A certification was issued covering all workers separated on or after August 5, 1987.

TA–W–20, 898; Country Counsin's Shoes, Mocanaqua, PA

A certification was issued covering all workers engaged in the production of injection molded fabric footwear separated on or after August 12, 1987.

TA–W–20, 922; Larance Engineering Co., Headquarted in Wichita Falls, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA–W–20, 922A; Larance Engineering Co., at Various Locations of TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA–W–20, 922B; Larance Engineering Co., at Various Locations of AR

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA–W–20, 922C; Larance Engineering Co., at Various Locations of LA

A certification was issued covering all workers separated on or after October 1, 1985 and before May 1, 1988.

TA–W–20, 859; Maiorisi Marketing, Secaucus, NJ

A certification was issued covering all workers separated on or after July 25, 1987.

TA–W–20, 842; Bennett Petroleum Corp., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 842A; Bennett Petroleum Corp., Reno, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 858; The Juvenile Shoe Corporation of America, Plant #5, Carthage, MO

A certification was issued covering all workers separated on or after February 1, 1988.

TA–W–20, 858A; The Juvenile Shoe Corporation of America, Plant #4, Aurora, MO

A certification was issued covering all workers separated on or after February 1, 1988.

TA–W–20, 858B; The Juvenile Shoe Corporation of America, Plant #4, Aurora, MO

A certification was issued covering all workers separated on or after July 27, 1987.

TA–W–20, 854; A.O. Smith Electric Product, Union City, IN (Formerly Westinghouse Elecric Corp)

A certification was issued covering all workers separated on or after March 28, 1988.

TA–W–20, 937; Core Service, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 938; Core Services, Inc., Victoria, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 939; Core Service, Inc., Hebbronville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 940; Core Service, Inc., Carrizo Spring, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 941; Core Service, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 941; Core Service, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–20, 793; Dixie Manufacturing Co., Columbia, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 856; Blue Ridge Shirt Co., Fayetteville, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 860; Mammoth Cave Garment Co., Cave City, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 932; National Stores, Div. of Washington Industries, Scotsville, KY

A certification was issued covering all workers separated on or after August 15, 1988.

TA–W–20, 968; Washington Manufacturing Co., Nashville, TN

A certification was issued covering all workers separated on or after August 15, 1988.

TA–W–20, 972; Dee Cee Apparel Inc., Hohenwald, TN

A certification was issued covering all workers separated on or after August 15, 1988.

TA–W–20, 973; Elkton Apparel Co., Elkton, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 974; Haywood Male, Inc., Franklin, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 975; Haywood Male, Inc., Gamaliel, KY

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 976; Haywood Male, Inc., Red Boiling Springs, TN

A certification was issued covering all workers separated on or after August 15, 1987.

TA–W–20, 977; Heavy Duty Manufacturing Co., Gainsboro, TN

A certification was issued covering all workers separated on or after August 15, 1987.

I hereby certify that the aforementioned determination were issued during the period October 3, 1988—October 7, 1988 and October 11, 1988—October 21, 1988. Copies of these determinations are available for inspection in Room 6434. U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: October 25, 1988.

[FR Doc. 88–25645 Filed 11–4–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20, 734]

JM Apparel Companies, Inc., Norwich, CT; Negative Determination Regarding Application for Reconsideration

By an application dated September 22, 1988 the petitioners requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on August 23, 1988 and published in the **Federal Register** on September 7, 1988 (53 FR 34596).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners state that JM Apparel exported production from the Norwich facility after its purchase in June, 1987 from the Jones Apparel Group. It also claimed that the customers responses were not accurate.

Workers at the Norwich facility were employed by two different firms during the one year period prior to the June 2, 1988 date of the petition. The subject firm, JM Apparel, was in business for only 11 months during this period ceasing all operations on May 13, 1988. JM Apparel is not an affiliate or in any way related to the Jones Apparel Group.

Investigation findings show that the worker petition did not meet the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974. The Department's surveyed the major customers of JM Apparel for their domestic and foreign purchases of women's sportswear in the first six months period of 1988 compared to the same period in 1987. Respondents to the survey showed that they did not increased their foreign purchases.

Investigation findings also show that on June 23, 1987 two lines of women's sportswear were sold to JM Apparel by the Jones Apparel Group. After the sale, the Jones Apparel Group immediately moved the remaining lines from the Norwich facility to other domestic contractors. A corporate sale and transfer of production to other domestic contractors would not form a basis for a worker group certification.

The findings also show that JM Apparel was a manufacturer. JM

Apparel purchased and cut fabric and shipped the material out to domestic and foreign contractors for sewing. Sewing operations were not performed at Norwich except for samples. All cutting not performed at Norwich went to domestic contractors. According to company officials the impact of imports on worker separations was negligible.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly the application is denied.

Signed at Washington, DC, this 19th day of October 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-25648 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,018]

Mulberry Circle Fashions, Perth Amboy, NJ; Termination of Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by Pub. L. 100-418, the Department of Labor herein presents the results of an investigation regarding certification of eligiblity to apply for worker adjustment assistance.

The investigation was initiated in response to a petition received on September 19, 1988 by the International Ladies' Garment Workers' Union on behalf of workers at Mulberry Circle Fashions in Perth Amboy, New Jersey. The workers at Mulberry Circle Fashions produced sportswear.

Numerous attempts were made to contact an official of Mulberry Circle Fashions in order to obtain the necessary data to determine whether the petitioning group of workers meet the eligibility requirements of the Trade Act of 1974. The subject firm is closed and, since the Department of Labor has been unable to reach a former official of the firm, the investigation has been terminated.

Signed at Washington, DC, this 17th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25649 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,927 and TA-W-20,928]

Ray Holifield and Associates, Oklahoma City, OK and Irving, TX; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on September 6, 1988 in response to worker petitions which were filed on behalf of workers and former workers at Ray Holifield and Associates, Oklahoma City, Oklahoma (TA-W-20,927) and Irving, Texas (TA-W-20,928).

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

No layoffs occurred in either facility since August 1, 1987, one year prior to the date of the petitions, which was August 1, 1988, and the earliest possible impact date. Consequently, further investigations have been terminated.

Signed at Washington, DC, this 25th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25651 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,930]

Rig Supply , Inc., Houston, TX; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 6, 1988 in response to worker petition which was filed on behalf of workers at Rig Supply, Incorporated, Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 26th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-25650 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,407-9]

Schaper Manufacturing Co., Lakeville, Minnesota Plant, Lakeville, Minnesota Distribution Center Plymouth, MN; Negative Determination on Remand

Pursuant to to the U.S. Court of International Trade remand, dated August 26, 1988, in *Former Employees of Tyco Toys, Inc.*, v. *Secretary of Labor* (USCIT 87-09-00945), the Department makes the following negative determination on remand.

This matter was remanded to the Secretary to seek relevant information from Tyco Toys and to perform a customer survey, if possible.

Workers at Schaper Manufacturing produced accessories for the Stompers toy, games and Cosom sport toys. Schaper Manufacturing also imported the Stompers toy. The Department denied the Schaper workers initially on May 13, 1987. This decision was published in the **Federal Register** on May 27, 1987 (52 FR 19784). The Department dismissed an application for administrative reconsideration on July 14, 1987 since it did not present evidence that the Department erred or new facts of a substantive nature bearing on the determination. This dismissal was published in the **Federal Register** on July 28, 1987 (52 FR 28206).

Investigation findings show that the Stompers toy was always imported and never produced at Lakeville. Schaper produced the accessories which accounted for only a small part of the Stompers toy sales. In September 1986 Schaper's Manufacturing was sold to a domestic firm—Tyco Toys.

Investigation findings on remand show that after the Schaper purchase, Tyco Toys continued to sell the imported Stompers toy but did not include the accessories. Other investigation findings show that Tyco did not outsource the accessory production to foreign sources but permitted that line of production to cease. With respect to the Cosom sport toys, Tyco contracted this production to other domestic manufacturers. The games part of the business was sold to another domestic manufacturer.

On remand the Department conducted a customer survey. The respondents indicated that they did not import accessories for the Stompers toy in 1985 or in 1986.

Conclusion

After reconsideration on remand, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers of Schaper Manufacturing Company, Lakeville and Plymouth, Minnesota.

Signed at Washington, DC, October 25, 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-25643 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certifications Under the Federal Unemployment Tax Act for 1988

On October 31, 1988, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., thereby enabling employers who make contributions to State unemployment funds to obtain certain credits against their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: October 31, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. Department of Labor,
Secretary of Labor, Washington, D.C.

October 31, 1988.

The Honorable Nicholas F. Brady,
Secretary of the Treasury, Washington, DC 20220

Dear Mr. Secretary:

Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1988. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by section 3303 of the Code.

The certification pursuant to Section 3303 omits Puerto Rico because the unemployment compensation law of this jurisdiction contains no experience rating provisions and permits no reduced rates of contributions.

Please note that the State of Minnesota and its unemployment compensation law is not included in the two certifications because conformity proceedings have been commenced to determine if the law of Minnesota contains provisions consistent with those required for State unemployment compensation laws by Section 3304(a) of the Internal Revenue Code of 1986. I am, therefore, constrained to omit this State and its law from the present certifications. However, omitting this State from the certifications does not constitute a present withholding of the certifications with respect to that State because my decision has not yet been made. I will let you know when the proceedings with Minnesota have been completed.

Sincerely,

Ann McLaughlin.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1988, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida.

Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine.

Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma.

Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, Wyoming.

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1988.

Ann McLaughlin,

Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1988.

Alabama	Nebraska
Alaska	Nevada
Arizona	New Hampshire
Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
Delaware	North Dakota
District of Columbia	Ohio
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Idaho	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Virgin Islands
Massachusetts	Washington
Michigan	West Virginia
Mississippi	Wisconsin
Missouri	Wyoming
Montana	

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-25686 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 And 10582; Addition to the List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the list of labor surplus areas is effective November 1, 1988.

SUMMARY: The purpose of this notice is to announce an addition to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas of October 6, 1988, (53 FR 39367).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective November 1, 1988.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on October 20, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas.

(November 1, 1988)

Labor surplus area	Civil jurisdiction included
Georgia:	
Fannin County	Fannin County

[FR Doc. 88-25644 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-11-M]

Anvil Mining Inc., JV; Petition for Modification of Application of Mandatory Safety Standard

Anvil Mining Inc., JV, P.O. Box 1369, Nome, Alaska 99762 has filed a petition to modify the application of 30 CFR 56.9003 (mobile equipment brakes) to its Anvil Mine (I.D. No. 50-01452) located in Seward Peninsula, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that powered mobile equipment be provided with adequate brakes.

2. Petitioner operates a Caterpillar 631B to haul coarse tailings away from the screening plant, and Terex scrapers to haul fine supersaturated tailings from the plant and raw materials to the plant for sizing and segregation. The scrapers operate 75% of the time in wet, soft, and muddy conditions. The materials are deleterious in nature and become unstable and unsupportive when wet and worked.

3. Due to continuous operation of the equipment under these types of conditions, application of the standard would result in a diminution of safety.

4. As an alternate method, petitioner proposes that operators would travel with the scraper bowl slightly above the ground surface and have one hand ready to drop the scraper bowl to the ground at all times in the case of deceleration on a grade or in the case of an emergency stop.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 267, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 7, 1988. Copies of the petition are available for inspection at that address.

Date: October 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-25646 Filed 11-4-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-94]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATE AND TIME: November 22, 1988, 8:30 a.m. to 5 p.m., November 23, 1988, 8:30 a.m. to 2 p.m.

ADDRESS: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1470).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, and work in progress on, and accomplishments of NASA's Space Sciences and Applications programs. The Life Science Subcommittee provides advise to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to develop a science strategy for the Life Sciences Division by assessing the science plans and by helping to integrate them into a cohesive Division plan. The Subcommitee is chaired by Dr. Francis J. Haddy and is composed of 17 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Subcommittee members).

Type of Meeting: Open.

Agenda

Tuesday, November 22

8:30 a.m.—Introduction and Chairman's Remarks.

9 a.m.—NASA Advisory System and Office of Space Science and Applications (OSSA) Status.

10:30 a.m.—Life Sciences Overview.

1 p.m.—Space Medicine and Biology Overview.

2:30 p.m.—Biological Systems Research Overview.

3:45 p.m.—Space Flight Program Projecture, Structure and Process.

5 p.m.—Adjourn.

Wednesday, November 23

8:30 a.m.—Space Station Planning Overview.

9:30 a.m.—Robbins Committee Recommendations.

10:45 a.m.—Life Sciences Initiative and Strategy.

1 p.m.—Development of Committee Strategy.

2 p.m.—Adjourn.

November 1, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-25669 Filed 11-4-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, 50-296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact; Correction

53 FR 40979 published on October 19, 1988, contained an "Environmental Assessment and Finding of No Significant Impact" related to Browns Ferry, Units 1, 2, and 3. In the section of "Finding of No Significant Impact," paragraph 3, line 3, the date of the exemption request should have read:" * * * January 31, 1986 as revised by letters dated November 21, 1986, May 26, 1987, September 14, 1987, and April 4, 1988, * * *"

Dated at Rockville, Maryland, this 28th day of October 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-25678 Filed 11-4-88; 8:45 am]

BLLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The general requirements in TS 3.0.4, applicable to each Limiting Condition for Operation (LCO) within Section 3.0, would be changed to allow operational condition changes without meeting the LCO requirements provided the remedial actions in the associated action statements do not require reactor shutdown if the Loc is not met in a specified time. For those TS which presently have an exception to TS 3.0.4, the exception would be deleted because the change in TS 3.0.4 would achieve the same effect by itself. For applicable TS which do not presently have an exception to TS 3.0.4, the change in TS 3.0.4 provides increased operational flexibility. TS 4.0.3 would be changed to allow up to 24 hours additional time to run missed surveillance tests. TS 4.0.4 would be changed to clarify that it does not prevent changing operational conditions to comply with action requirements. The Bases for TS 3.0 and 4.0 would be changed to reflect the changes in the TS.

Prior to issuance of the license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular referrence to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene became parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missiouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania

Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 30, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25679 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station Unit No. 1); Exemption

I

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 (NMP-1 or the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

By letter dated September 14, 1988, the licensee requested an exemption from the requirements of 10 CFR 50.62(c)(4), which establishes the minimum injection flow rate and the boron concentration for the standby liquid control system, (SCLCS).

Specifically, 10 CFR 50.62(c)(4) requires that each boiling water reactor must have an SLCS with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute (gpm) of 13 weight percent sodium pentaborate solution. The licensee requests an exemption from this requirement to permit use of an equivalency formula considering sodium pentaborate concentration, pump flow rate, boron enrichment and the requirements for the liquid poison system which performs the function of the SLCS.

The requirement established by the regulation was intended to provide for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an anticipated transient without scram (ATWS) event. The reactor vessel size used to establish the required flow rate of 86 gpm and the sodium pentaborate concentration of 13 weight percent was the large 251-inch diameter vessel used in the BWR/5 and BWR/6 designs. The NMP-1 reactor has a much smaller, 213-inch diameter, vessel. For the NMP-1 reactor, a lesser rate of injection of sodium pentaborate and/or a smaller concentration will provide adequate shutdown margin in an ATWS event, equivalent to that called for by the regulation for the larger 251-inch diameter boiling water reactor vessel. Refer to Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," January 28, 1985.

III

The purpose of the rule is to reduce the risk from ATWS events by ensuring adequate shutdown margin. In this case, the injection flow rate, increased enrichment, and boron concentration will provide the equivalent level of control capacity for the smaller NMP-1 reactor pressure vessel as that called for by ATWS rule based on larger reactor pressure vessels. Requiring NMP-1 to provide the flow rate-boron concentration capacity specified by the rule would not, in these particular circumstances, serve the underlying purpose of the rule. Thus, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii). As set forth in the safety evaluation for Amendment No. 101, issued concurrently with this Exemption.

IV

The licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). As discussed above, the underlying purpose of the requirements of paragraph (c)(4) of 10 CFR 50.62 is to ensure adequate shutdown margin in an ATWS event. The underlying purpose is achieved and served by using the equivalency formula discussed in the licensee's application for a Technical Specification amendment concerning the liquid poison system dated March 7, 1988.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in Section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of 10 CFR 50.62(c)(4). Therefore, the Commission hereby grants the Exemption from paragraph (c)(4) of 10 CFR 50.62 to allow the consideration of the smaller vessel size in determining the equivalent control capacity of 13 weight percent sodium pentaborate at 86 gpm for the liquid poison system at NMP-1.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant impact on the environment (53 FR 43297).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25680 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Station Unit No. 2); Exemption

I

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. NPF-69, which authorizes operation of the Nine Mile Point Nuclear Station Unit 2 (NMP-2 or the facility). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a boiling water reactor at the licensee's site in Oswego County, New York.

II

10 CFR 50.71(e)(3)(i) requires, in part, that licensees submit a revision of the Final Safety Analysis Report (FSAR) containing those original pages that are still applicable plus new replacement pages within 24 months of July 22, 1980 or the date of issuance of the operating license, whichever is later, and this revision shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision. This regulation would have required submittal of the revised FSAR by October 31, 1988.

III

By letter dated September 16, 1988, the licensee requested an exemption from certain requirements of 10 CFR 50.71(e). Specifically, the licensee requested that it be permitted (1) to delay the submittal of the revised FSAR from the required date of no later than October 31, 1988 to no later than April 30, 1989; (2) to update the FSAR to April 30, 1988, up to a full year prior to the revised submittal date, and (3) to submit revised pages only and not resubmit the original pages.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia,*

The Commission will not consider granting an exemption unless special cricumstances are present. Special circumstances are present whenever * * * (ii) Application of the regulation in the particular circumstances would not serve the underlying propose of the rule or is not necessary to achieve the underlying purpose of the rule; or (iii) Compliance would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated, or * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

IV

The requested exemption is administrative and would not affect plant equipment, operations or procedures. Moreover, in response to an NRC request the licensee provided an additional FSAR update in May 1987, seven months after the operation license was issued, to incorporate a large volume of commitments made by letter subsequent to Amendment No. 27 and to reflect changes resulting from the replacement of main steam isolation valves. Thus, some of the changes that would have been required to be in the update to be submitted within 24 months after issuance of the operating license have already been incorporated.

The FSAR update will be up to date as of April 30, 1988 which is the date six months prior to the original required date of October 31, 1988. Therefore, this date will be unaffected by the later submittal. Furthermore, the licensee has stated that the next revision would be filed within 12 months of the original date for submittal (i.e., October 31, 1989) so future submittal dates would remain unaffected.

The extension of time for the submittal is needed because of the unusually large size of the FSAR for NMP-2, the large volume of changes that need to be processed for this initial update, and the unexpected delays in the power ascension program The licensee estimates that over 55,000 person hours of effort will be required to complete the process in which about 80 individuals are involved. In addition, the licensee has assigned persons familiar with the plant to review the changes, therefore, the number of people available to perform this function is limited. In addition, the licensee has indicated in discussions with the staff that it will be exploring ways to streamline the FSAR update process for future updates. Therefore, the Commission has determined that the licensee has made a good faith effort to comply with the regulation but, because of the unexpected complexity of the task and the delays in the power ascension program, will be unable to complete the effort by the required date of October 31, 1988. Therefore special circumstances exist that warrant a temporary delay in the submittal of the undated FSAR.

Because of the large size of the FSAR for NMP-2 (35 volumes vs. 2 volumes for Unit 1), reprinting and shipping complete sets of the FSAR would result in costs that are significantly in excess of what was typically incurred for other plants when updating the FSAR. The licensee has stated that a complete, new set of updated FSARs would cost $150,000, whereas the proposed alternative (i.e., replacement pages) would cost only $66,000. As a comparison the most recent update for Nine Mile Point Unit 1 cost approximately $10,000 to produce.

The purpose of having the licensee submit a complete copy of the FSAR with original pages was to ensure that the NRC had an updated copy of the FSAR from licensees that had not updated the FSAR in some time. The original NMP-2 FSAR was submitted in April 1983 and has been updated 28 times since then. Each time replacement pages were submitted to the Commission. In addition, the licensee will be requested to submit a list which identifies the current page of the FSAR following page replacement as is required when FSARs are updated using the replacement page method. This has already been the licensee's practice in recent FSAR amendments. As these lists will identify the current effective pages in the FSAR, and the Commission already has a copy of the unaffected pages of the FSAR, resubmital of the unaffected pages is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances exist that warrant the granting of an exemption to allow the initial FSAR update to be accomplished by the replacement page method.

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants an exemption, as described in Section III above from 10 CFR 50.71(e)(3)(i) from the requirement to file a separate and new updated FSAR for NMP-2 by October 31, 1988. The initial FSAR update is to be submitted by April 30, 1989, may be up-to-date as of April 30, 1988, and may be submitted by the replacement page method.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 43952).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Division Director, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25681 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the licensee for an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corporation for operation of the Nine Mile Point Nuclear Station Unit No. 1 (the facility), located in Oswego County, New York.

The denied portion of the proposed amendment would have revised Figure 3.1.2b, "Minimum Allowable Solution Temperature" in the Technical Specifications. The revised curve would have extended the curve to lower temperatures (from 40° F to 30° F) to define the weight percent sodium pentaborate in solution at temperatures as low as 30° F. Notice of consideration of issuance of the amendments was published in the **Federal Register** on June 1, 1988 (53 FR 20044). The licensee's application for amendment was dated March 7, 1988, as supplemented April 13, 1988.

During the review, the staff determined that the revised curve for Figure 3.1.2b had been shifted in the non-conservative direction as well as extended. This was discussed with the licensee's staff who stated that the shift was made in error. The licensee further stated that the revised curve was independent of the other changes requested in the amendment and was not necesary for operation with the other proposed changes for the Liquid Poison System. The staff determined that operation with the revised curve was not acceptable but that operation with the existing Figure 3.1.2b with the other changes in the amendment request was acceptable.

By December 7, 1988 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Troy B. Conner, Jr., Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 7, 1988, as amended April 13, 1988, and (2) the Commission's letter to Niagara Mohawk Power Corporation dated October 31, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Reference and Document Department, Penfield Library, State University of New York, Oswego, New York 13126. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Mary F. Haughey,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-25682 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric and Gas Co. (Salem Generating Station, Unit 2); Exemption

I

The Public Service Electric & Gas Company (the licensee) is the holder of Facility Operating License No. DPR-75 which authorizes operation of the Salem Generating Station, Unit 2, at a power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Salem County, New Jersey. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.46(a)(1)(i) of 10 CFR Part 50 requires that Emergency Core Cooling System (ECCS) cooling performance be calculated with an acceptable evaluation model and the results conform to the criteria set forth in § 50.46(b) of 10 CFR Part 50. Generic Letter 86-16, Westinghouse ECCS Evaluation Models, dated October 22, 1986, requires that plants using the 1978 version of the Westinghouse ECCS Evaluation Model be reanalyzed using a corrected evaluation model if an ECCS analysis is used to support a future licensing action. Salem Unit 2 currently uses the 1978 Westinghouse Evaluation Model.

During the fourth refueling outage at Salem Unit 2, 2.7% of the steam generator tubes were plugged and some unrecoverable loose parts were left in the Reactor Coolant System (RCS). A safety evaluation has been performed, including an estimate of the effect of such change on the Large Break LOCA analysis. The safety evaluation found that the proposed exemption is acceptable. However, the requirement exists to revise the Large Break LOCA analysis to accurately reflect and document the current plant configuration in the ECCS Appendix K model. The licensee has proposed a one-time exemption from the requirements of § 50.46(a)(1)(i) to allow Salem Unit 2 to operate while the ECCS analysis is being performed. Submittal of the ECCS reanalysis is scheduled for March 31, 1989. The staff has found that approval of the proposed exemption is warranted and should be granted so that Salem Unit 2 may return to power operation without encountering any unnecessary delay.

III

The NRC staff has evaluated the licensee's basis for requesting the schedular exemption in providing the revised ECCS analysis and finds that not granting this exemption would require Salem Unit 2 to remain shutdown for a period of about five months while the analysis is being done. The staff reviewed the licensee's safety evaluation of a Large Break LOCA for both steam generator tube plugging and unrecovered loose parts in the reactor coolant system.

Based on the licensee's Large Break LOCA sensitivity study, a conservative estimate of the penalty would be 28°F associated with 3.5% tube plugging and 22°F associated with loose parts in the RCS of Salem Unit 2. However, the licensee indicated that the licensing basis Large Break LOCA analysis for Salem was performed using fuel performance parameters which are now overly conservative. Using the lower rod internal back fill pressure of the fuel currently in Salem Unit 2, results in a peak clad temperature (PT) benefit larger than the combined penalty of the approximately 50°F due to the steam generator tube plugging and the loose parts in the RCS. Thus, the net effect will result in no increase to the current calculated PCT of 2130°F for a Large Break LOCA. This PCT is low enough to assure that the other criteria for a Large Break LOCA will be met. The staff considers that the licensee evaluation is

reasonable and conservative. This is also discussed in the attached Safety Evaluation. Based on the above information, provided by the licensee, and the staff's evaluation of the licensee's submittal, the staff concludes that the licensee has provided an adequate basis for the conclusion, that granting the exemption will not result in operation of Salem Unit 2 outside the acceptance criteria of § 50.46(b) of 10 CFR Part 50.

The regulations in 10 CFR 50.12 state that the Commission will not consider granting an exemption unless special circumstances are present. In its letter of October 21, 1988, the licensee addressed three of those special circumstances which are applicable to this request for exemption. The licensee states that special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that submittal of the formally amended ECCS analysis prior to restart of Salem Unit 2 versus the requested five-month exemption is not necessary to achieve the underlying purpose of 10 CFR 50.46. 10 CFR 50.46(a)(1)(i) requires that the calculated cooling performance of the ECCS conform to the acceptance criteria of § 50.46(b). The licensee has provided safety evaluations which indicate that sensitivity studies performed on the current ECCS analysis assure that the calculated peak clad temperature value is bounding and in compliance with the acceptance criteria of § 50.46(b).

The licensee states that the special circumstances of 10 CFR 50.12(a)(2)(iii) are present in that extending the current outage for the five months necessary to complete the reanalysis would result in a severe financial penalty and the associated costs of replacement power. Also, similar requests have been granted to the Tennessee Valley Authority for Sequoyah Unit 1 and Pacific Gas and Electric for Diablo Canyon Unit 2, which is not extended to Salem Unit 2, would result in costs well in excess of those incurred by others.

The licensee also states that the special circumstances of 10 CFR 50.12(a)(2)(v) are present in that the exemption would provide only temporary relief from the applicable regulation and became necessary as a result of the unanticipated plugging of all row 1 steam generator tubes and the unrecoverable loose parts in the reactor coolant system. The licensee has provided the bases for its conclusion, that operation of Salem Unit 2 until March 31, 1989 while the ECCS reanalysis is being performed will not result in conditions such that criteria of § 50.46(b) will be exceeded, and the staff agrees. These bases are discussed in more detail in the enclosed Safety Evaluation and the licensee's submittals.

Prior history of the operation of the Salem, Unit 2 steam generators has shown an excellent record of performance with minimal tube degradation. These row 1 failures have followed a classic pattern of onset, i.e., a prolonged period of operation with no apparent degradation followed by an abrupt occurrence of multiple defects. Also, Salem, Unit 1 has not exeperienced the same type of failure even though it has been in operation about five years longer than Salem, Unit 2. At the time of discovery the licensee promptly contacted Westinghouse for the ECCS reanalysis. Because the reanalysis requires significant engineering manpower expenditures by Westinghouse (i.e., inputting amended parameters into computer codes, running lengthy computer codes, verifying output results and generating a final report) the reanalysis will take about five months to complete. The licensee has shown a good faith effort to comply with the regulations and will be in compliance as promptly as is reasonable.

Based on the staff's findings, as discussed above, the staff has determined that operation of Salem Unit 2, while the ECCS reanalysis is being performed, would not result in a situation wherein the peak clad temperature would exceed 2200°F. Therefore, the staff concludes that special circumstances of 10 CFR 50.12(a)(2)(v), in that the exemption is temporary and a good faith effort by the licensee to comply has been deomonstrated. Accordingly, the NRC staff finds that operation of Salem Unit 2 during the proposed exemption period is acceptable. Therefore, the staff finds the proposed exemption from 10 CFR 50.46(a)(1)(i) until March 31, 1989, to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the proposed exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

An exemption is granted from the requirement to have the ECCS cooling performance calculated in accordance with an acceptable evaluation model. This exemption is granted for the period ending on March 31, 1989 and is applicable to Salem Unit 2 as indicated in the Safety Evaluation Report issued in support of this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (53 FR 44134, November 1, 1988).

This exemption is effective on November 1, 1988, and is to expire on March 31, 1989.

Dated at Rockville, Maryland, this 1st day of November 1988.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25683 Filed 11-4-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition by Rice Council for Market Development and Rice Millers' Association for Action Under Section 301; Decision Not To Initiate an Investigation; Reasons Therefor

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined not to initiate an investigation at this time under section 302 of the Trade Act of 1974, as amended (19 U.S.C. 2412), with respect to a petition filed September 14, 1988 by the Rice Council for Market Development and the Rice Millers' Association. However, if Japan does not permit progress toward opening its rice market at the Midterm Review of the Uruguay Round trade negotiations in Montreal, Canada, December 5 through 7, 1988, and does not appear committed to solving the rice issue in the Uruguay Round, then the Trade Representative will entertain an immediate resubmission of the petition.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Senior Economist for Agricultural Affairs, Office of U.S. Trade Representative, (202) 395-5006, or Glen Fukushima, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395-5070.

SUPPLEMENTARY INFORMATION: On September 14, 1988, the Rice Council for Market Development and the Rice Millers' Association filed a petition with the United States Trade Representative under section 302 of the Trade Act of 1974, as amended, with respect to Japanese market barriers to U.S. rice exports. Although sympathetic to the concerns of the petitioners, the Trade Representative determined not to initiate an investigation because he believes the Uruguay Round of

multilateral trade negotiations provides a more effective way to open the Japanese rice market to U.S. exports.

The Trade Representative gave the following additional reasons for declining to initiate an investigation under section 302. The United States is still in the middle of Uruguay Round multilateral negotiations scheduled to conclude in 1990. Acceptance of the petition would have triggered a dispute settlement process under the General Agreement on Tariffs and Trade (GATT) which would take easily a year to complete. If the United States prevailed in the GATT dispute, Japan could refuse to implement the GATT decision, which would likely result in responsive action by the United States under section 301. Such action would "level the playing field" but would not expand the Japanese market for rice exports. In constrast, the Trade Representative believes that the multilateral round of trade negotiations will expand the Japanese market for rice exports. Thus, the United States can achieve a more favorable outcome through multilateral negotiations than section 301 action, with a delay of only one additional year.

The Japanese government will have the opportunity to demonstrate its commitment to resolving the rice issue in the context of the multilateral agricultural negotiations in early December 1988, when trade ministers of the 96 GATT nations meet in Montreal for the Midterm Review of the Uruguay Round. The Trade Representative has called upon Japan to assert its willingness at Montreal to negotiate and implement, in cooperation with its trading partners, long overdue reforms in policies affecting agricultural trade. He will not accept arguments in Montreal that basic foodstuffs should be exempt from market access rules in agriculture, or that Japan cannot accede to short-term measures that might be agreed upon as a down-payment on long-term reform.

The Trade Representative has announced that if representatives of the Japanese government are not helpful and supportive in the agricultural discussions in Montreal, and if it becomes apparent that Japan is not committed to solving the rice issue in the Uruguay Round, the Trade Representative will entertain an immediate resubmission of the Rice Council and Rice Millers' petition. If such a petition is submitted, the Trade Representative will make a determination whether to initiate an investigation under section 302 prior to January 20, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 88-25685 Filed 11-4-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26237; File No. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Temporarily Approving Proposed Rule Changes on Depository Division Rules

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rules changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers or mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the **Federal Register** on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. In that regard, MBSCC has indicated to the Commission that it will file an amendment to the proposals in the near future. For those reasons, the Commission is temporarily approving the proposals through December 31, 1988.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) be, and thereby are approved temporarily through December 31, 1988.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 16812; 25662 (May 4, 1988) 53 FR 16808; 25659 (May 4, 1988) 53 FR 16818.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan Katz,

Secretary.

Dated: November 1, 1988.

[FR Doc. 88-25666 Filed 11-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26236; File No. SR-MSE-88-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Changes in Its Fees and Assessments Scheduled.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1988, the Midwest Stock Exchange Incorporated filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("Exchange" or "MSE") proposes to change its Fees and Assessments schedule regarding Regulation "T" Extensions and Buy-In Extensions as follows:

(*Addition italicized;* [Deletions Bracketed])

(h) Regulation "T" Extension.

$2 per extension request form [processed] *for manual processing and $1 per extension request for electronic transmission media processing.*

(i) Buy-In Extension (SEC Rule 15c3-3).

$2 per [request form processed, pursuant to S.E.C. Rule 15c3-3.] *extension request form for manual processing and $1 per extension request for electronic transmission media processing.*

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The revised fees more accurately reflect the lower actual cost of processing Regulation "T" and Buy-in Extension requests submitted electronically by Exchange members and member organizations as well as non-Exchange members who submit electronically Extension request for processing by the Exchange.

The proposed rule change is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of dues, fees and other changes among Exchange members and other persons using the Exchange's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

Dated: November 1, 1988

[FR Doc. 88-25667 Filed 11-4-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Metro North Commuter Railroad Co.; Public Hearing

The Metro North Commuter Railroad Company (MNRC) has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed modification of certain signal systems. These proceedings are identified as the following Block Signal Application Numbers: BS-Ap-No. 2785; BS-Ap-No. 2786; BS-Ap-No. 2787; BS-Ap-No. 2788; and BS-Ap-No. 2789.

BS-Ap-No. 2785

In this proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between controlled points from Stamford, milepost 0.2, to New Canaan, Connecticut, milepost 7.6, on the New Canaan Branch of the New Haven Line.

BS-Ap-No. 2786

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from CP 35, milepost 34.3, to CP 75, milepost 75.5, on the Hudson Line.

BS-Ap-No. 2787

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from Mount Vernon, milepose 12.2, to Rye, New York, milepost 24.2, on the New Haven Line.

BS-Ap-No. 2788

In this proceeding, the MNRC is seeking approval to remove the wayside automatic signals and operate trains by signal indications of the cab signal system in traffic control territory between interlockings from Greenwich, milepost 26.1, to New Haven, Connecticut, milepost 72.3, on the New Haven Line.

BS-Ap-No. 2789

In the proceeding, the MNRC is seeking approval to remove the wayside automatic signals in traffic control territory and operate trains by signal indications of the cab signal system between interlockings from North White Plains, milepost 24.0, to Brewster, New York, milepost 52.0, on the Harlem Line.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on December 15, 1988, in Room 305-A, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designate by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FAA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on October 31, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-25709 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-837]

Waterman Steamship Corp.; Application To Provide Trade Route 18/17 Service

Waterman Steamship Corporation (Waterman), by application dated October 20, 1988, as amended on November 3, 1988, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-115 for necessary approvals to provide Trade Route (TR) 18/17 (U.S. Atlantic and Gulf/Red Sea-Indonesia-Malaysia-Singapore) service with a C9-S81d LASH type vessel named *Green Valley* to be bareboat chartered from Central Gulf Lines, Inc. If granted, the vessel will be on berth mid to end December and will make a voyage to the full range of TR 18. Waterman proposes to operate the vessel for one subsidized voyage with options for up to six additional voyages.

Under the ODSA, Waterman is authorized to make a minimum/maximum of 30/40 sailings per year on TR 18/17.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on November 21, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Date: November 2, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-25701 Filed 11-4-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 1, 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.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Opinion Survey on IRS Publication 2
Description: The data collected will be used to determine if Publication 2 is a viable alternative for Publication 17. The sample will be selected from all taxpayers who have requested Publication 17
Respondents: Individual or households, Businesses or other for-profit
Estimated Number of Respondents: 1,578
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,578 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 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25695 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 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.

Departmental Offices

OMB Number: New
Form Number: TD F 90-21.4
Type of Review: New collection
Title: Survey of Depreciation of Scientific Equipment
Description: The purpose of this study is to collect data that will allow the determination of the class life for scientific instruments. The study will affect businesses that use scientific instruments.
Respondents: Businesses and other for-profit
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 6 hours
Frequency of Response: Other (unless changes in technology required otherwise, reporting will be required only once.)
Estimated Total Reporting Burden: 2,160 hours
Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25696 Filed 11-4-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 43967, October 31, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: November 8, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Officer Compensation"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–25761 Filed 11–3–88; 11:16 am]

BILLING CODE 7710-12-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1410]

TIME AND DATE: 10 a.m. (c.s.t.), November 9, 1988.

PLACE: Fifth Floor Board Room, Memphis Light, Gas and Water Division, 220 South Main Street, Memphis, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on October 19, 1988.

Action Items

New Business

C—Power Items

C1. Revision to 5-Percent Interruptible Power Arrangements.

E—Real Property Transactions

E1. Acquisition of Approximately 0.45-Acres of Beech River Watershed Development Authority (BRWDA) Land in Henderson County, Tennessee.

E2. Reconveyance of a Public Access Tract From the State of Tennessee Affecting 7.1 Acres of Kentucky Reservoir Land in Decatur County, Tennessee.

E3. Grant of Easement to Alabama Department of Conservation and Natural Resources Affecting Approximately 13,000 Acres of Guntersville Reservoir Land in Jackson County, Alabama.

F—Unclassified

F1. Revised TVA Code II Accounting, Accounts Receivable.

F2. Contract No. TV–76563A with Walker College, Jasper, Alabama; and Contract No. TV–75668A with the Appalachian Regional Commission for the Establishment of an Industrial Incubation Center.

F3. Supplement 2 to Personal Services Contract No. TV–74314A with NUS Corporation.

F4. Supplement 11 to Personal Services Contract No. TV–53532A with Hartford Steam Boiler Inspection and Insurance Company.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: November 1, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88–25742 Filed 11–3–88; 11:02 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 53, No. 215
Monday, November 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Graduate Fellowships Grants Proposals

Correction

In notice document 88-24373 beginning on page 41391 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41391, in the second column, in the third line from the bottom, "$48,00" should read "$48,000".

2. On the same page, in the third column, in the tenth line from the top, "$1,00" should read "$1,000".

BILLING CODE 1505-01-DS4734

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al.

Correction

In notice document 88-24876 beginning on page 43462 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43462, in the third column, in the seventh line, "*Commission*" should read "*Commissioner*".

2. On page 43463, in the first column, in the tenth line from the bottom, "Joel" should read "JEOL".

3. On the same page, in the third column, in the second paragraph, in the fourth line, "*Intended Use*" should read "*Instrument*" and in the seventh line, "*Instrument*" should read "*Intended Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Dallas et al.

Correction

In notice document 88-24877 beginning on page 43464 in the issue of Thursday, October 27, 1988, make the following corrections:

1. On page 43464, in the third column, in the last paragraph, in the third line, "Instrument" should read "Institute".

2. On page 43465, in the first column, in the 15th line from the bottom, "*Commission*" should read "*Commissioner*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017-8217]

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 88-24659 beginning on page 42985 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. On page 42985, in the second column, in the 6th and 7th lines from the bottom, the date "August 3, 1983" should read "August 31, 1983".

§ 646.2 [Corrected]

2. On page 42988, in the third column, under § 646.2, in the eighth line, "work" should read "word".

§ 646.4 [Corrected]

3. On the same page, in the same column, under § 646.4, in the fourth line, "work" should read "word".

§ 646.22 [Corrected]

4. On page 42989, in the third column, under § 646.22(c)(1), the 10th line should read "fishery aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption".

5. On the same page, in the same column, under § 646.22(c)(2)(ii), in the first line, "EES" should read "EEZ".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

Correction

In proposed rule document 88-23402 beginning on page 39627 in the issue of Tuesday, October 11, 1988, make the following correction:

On page 39628, in the third column, in the first complete paragraph, in the fourth line, "years" should read "days".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

Correction

In rule document 88-24416 beginning on page 43698 in the issue of Friday, October 28, 1988, make the following correction:

On page 43698, in the second column, under **DATES**, the second paragraph should read: *Comments:* Comments on the interim rule should be submitted to the address shown below no later than November 28, 1988.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Education Appeal Board

Correction

In notice document 88-19488 beginning on page 32643 in the issue of Friday, August 26, 1988, make the following corrections:

1. On page 32643, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, in the fourth line, the ZIP code "20202" should read "20202-3724" and, in the fifth line, the

phone number "732-1754-3724" should read "732-1754".

2. On the same page, in the same column, in the tenth line from the bottom, "withholding" was misspelled.

3. On page 32644, in the first column, in the eighth line from the top, "Cancer" should read "Center".

4. On the same page, in same column, in the 18th line from the bottom, "programs" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

Correction

In the issue of Wednesday, October 19, 1988, on page 41013-41023, in the first column, in the correction to rule document 88-21771, a portion of the text that appeared was inaccurate and is corrected as follows:

§ 228.12 [Corrected]

In paragraph one, in the sixth line, "18.3" should read "16.3".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-UST-3; 3419-3]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective

Correction

In rule document 88-24395 beginning on page 43322 in the issue of Wednesday, October 26, 1988, make the following correction:

On page 43330, in the second column, in the second complete paragraph, in the first and second line, "January 24, 1988" should read "January 24, 1989".

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

20 CFR Part 365

Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs

Correction

In rule document 88-24561 beginning on page 43429 in the issue of Thursday, October 27, 1988, make the following correction:

On page 43434, in the second column, in the 13th line from the bottom, in the authority citation for Part 365, "9 U.S.C. 794" should read "29 U.S.C. 794".

BILLING CODE 1505-01-D

federal register

Monday
November 7, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 14, 100, 103, 104, 105, 106, 109, 110, 115 and 121

[Docket No. R-88-1425; FR-2565]

Fair Housing; Implementation of the Fair Housing Amendments Act of 1988

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, or financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988, which was enacted September 13, 1988 and will become effective on March 12, 1989, expands the coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status, establishes an administrative enforcement mechanism for cases where discriminatory housing practices cannot be resolved informally, and provides for monetary penalties in cases where housing discrimination is found.

The Fair Housing Amendments Act also created design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991 (30 months after the enactment date of the law) and establishes an exemption from the prohibitions against discrimination on the basis of familial status for housing for older persons.

In addition, the Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations to carry out the Act. Section 13 of the Fair Housing Amendments Act states that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than 180th day after the date of enactment of this Act, issue rules to implement Title VIII as amended by this Act."

This proposed rule is intended to implement the responsibility of the Secretary of Housing and Urban Development to publish rules required in the Fair Housing Amendments Act. Several rulemaking actions are proposed:

The regulatory material previously contained in Part 100 is proposed to be redesignated, as revised, as a new Part 121. A new Part 100 is proposed to be added, describing the nature of conduct made unlawful with respect to the sale, rental or financing of dwellings or in the provision of services and facilities in connection therewith.

The Department further is proposing to add a new Part 103 establishing procedures relating to the investigation of complaints of discriminatory housing practices made unlawful under Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act (hereinafter referred to as the Fair Housing Act) and a new Part 104 establishing procedures for the conduct of formal administrative enforcement proceedings involving discriminatory housing practices.

As part of this rulemaking the Department is also proposing to revise other existing regulations issued under Title VIII to reflect the expanded coverage of the Fair Housing Act. Specifically, the Department is proposing technical revisions to the Fair Housing Poster regulation (24 CFR Part 110), and the Fair Housing Advertising regulation (24 CFR Part 109) as well as its Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 regulation (24 CFR Part 106). Revisions to the regulations providing for the recognition of state and local fair housing laws as providing rights and remedies which are substantially equivalent to those in Title VIII (24 CFR Part 115) are also being proposed. In addition, the Department is proposing to redesignate and revise the existing Racial, Sex, and Ethnic Data regulation (24 CFR Part 100) as a new Part 121.

DATE: Comments must be received by December 7, 1988.

ADDRESSES: Interested persons are invited to submit comments on the Proposed Rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For Part 100, Subparts D and E, David Enzel ((202) 755-6207); for Parts 103 and 104, Karen Osterloh ((202) 755-7084); for all other parts, Charles Farbstein ((202) 755-5570), Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500. (The above listed numbers are not toll-free numbers.) The toll-free TDD number is 1-800-543-8294. This proposed rule will be available on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10276, at the above address.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development , Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503..

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) made it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, or national origin. Under the provisions of Title VIII, persons who believed that they had been subjected to, or were about to be subjected to a discriminatory housing practice could file a complaint with the Secretary of Housing and Urban Development. Title VIII required the Department of Housing and Urban Development to investigate each complaint and, where the Department determined to resolve the matters raised in a complaint, to engage in informal efforts to conciliate the issues in the complaint.

However, where these informal efforts to conciliate a case were unsuccessful, Title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual. In addition, while the

Secretary could refer a case involving a pattern or practice of discrimination to the Attorney General for the initiation of a civil action, Federal courts did not award individual relief to the victims of discrimination in such cases.

The Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) was enacted to strengthen the administrative enforcement provisions of Title VIII, to add prohibitions against discrimination in housing on the basis of handicap and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. The amended law will become effective on March 12, 1989.

The provisions in the Fair Housing Act describing the nature of conduct which constitutes a discriminatory housing practice have been revised to extend the protections of the Fair Housing Act to persons with handicaps and families with children. In this respect sections 804, 805, and 806 of the Fair Housing Act prohibit discrimination in any aspect relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions or in the provision of services and facilities in connection therewith because of race, color, religion, sex, handicap, familial status, or national origin.

In addition to prohibiting discrimination against persons with handicaps, the Fair Housing Act makes it unlawful to refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises (section 804(f)(3)(A)). With respect to rental housing, the Fair Housing Act provides that a landlord may, where reasonable, condition permission for a modification on the renter's agreeing, on vacating the unit, to restore the interior or the premises to the condition that existed before the modification, reasonable wear and tear excepted. The Act also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Further, the Fair Housing Act makes it unlawful to design and construct certain multifamily dwellings, for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with handicaps. All premises within such dwelling also are specifically required to contain several features of adaptive design so that dwellings are readily accessible to and usable by persons with handicaps.

With respect to familial status the Fair Housing Act provides an exemption from the prohibitions against discrimination because of familial status for housing for older persons.

Section 805 of the Fair Housing Act as revised prohibits discrimination related to "residential real estate-related transactions" rather than merely referring to "financing". In addition, the definition of the term residential real estate-related transaction specifically indicates that the Fair Housing Act applies to the selling, brokering and appraising of dwellings and secondary mortgage market activities with respect to securities affected or supported by dwellings as well as the making and purchasing of loans and other financial assistance for dwellings. The Act, however, does not prohibit a person engaged in the business of furnishing appraisals from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Section 810 of the Fair Housing Act provides that any person who believes that he or she has been, or will be, subjected to a discriminatory housing practice because of race, color, religion, sex, handicap, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development. This section also authorizes the Secretary of Housing and Urban Development to file complaints on the Secretary's own initiative and to investigate housing practices in order to determine whether a complaint should be filed. Complaints must be filed not later than one year after an alleged discriminatory housing practice has occurred or terminated.

Upon the filing of a complaint the Secretary is required to notify any respondent named in the complaint of the acceptance of the complaint and the discriminatory housing practices alleged in the complaint. The respondent may file not later than 10 days after receipt of the notice of a complaint, an answer to the complaint. The Secretary is required to make an investigation of the alleged discriminatory housing practice and to complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so.

At the end of each investigation the Secretary is required to prepare a final investigation report. Under section 810(d) the final investigation report will be available to an aggrieved person or a respondent, upon request, at any time after the investigation is complete.

Section 810(b) of the Act directs the Secretary, to the extent feasible, to engage in efforts to conciliate the matters raised in the complaint at any time after the filing of the complaint.

Section 810(e) of the Act empowers the Secretary to authorize the Attorney General to file a civil action seeking appropriate preliminary or temporary relief pending final disposition of a complaint if, at any time after the filing of such complaint, the Secretary concludes that such action is necessary to carry out the purposes of the Act.

Whenever a complaint alleges a discriminatory housing practice within a State or locality which has a Fair Housing law or ordinance which has been certified by the Secretary as being substantially equivalent to the Fair Housing Act, the Secretary must refer the complaint to the agency administering such law or ordinance before taking any action with respect to the complaint. Except with the consent of a certified agency, or in other limited situations such as where a complaint is not being processed in a timely fashion or the State or local law or ordinance is found to no longer be substantially equivalent, the Secretary may not take any further action with respect to complaints referred to such agencies.

Section 810(f) of the Act permits the Secretary to certify an agency only where the Secretary determines the rights protected by the agency, the procedures followed by the agency, the remedies available to the agency, and the availability of judicial review of the agency's actions are substantially equivalent to those created in the Fair Housing Act.

This section also provides that agencies which the Secretary has determined administer State and local fair housing laws which provided rights and remedies for discriminatory housing practices that were substantially equivalent to those contained in Title VIII of the Civil Rights Act of 1968 or which had been recognized for interim referral of complaints under Title VIII would be considered certified for a period not to exceed 48 months for the purpose of referring complaints under the Fair Housing Act with respect to matters for which they had been certified on the day before the date of enactment of the Fair Housing Act (*i.e.*, September 12, 1988).

Section 810(g) of the Act requires the Secretary, in cases where the matters raised in a complaint cannot be resolved by conciliation, to determine, based upon the facts, whether reasonable cause exists to believe a discriminatory housing practice has occurred or is

about to occur. Such a finding must be made by the Secretary within 100 days after the filing of a complaint or within 100 days after the Secretary has commenced action on a complaint which had been referred to a certified agency, unless it is impracticable to do so. Where the Secretary makes a determination that reasonable cause exists the Secretary immediately issues a charge on behalf of the aggrieved person commencing a formal administrative proceeding before an administrative law judge.

Section 812(a) of the Act provides a complainant, an aggrieved person, and the respondent with an opportunity to elect not to proceed before an administrative law judge but to move the case to an appropriate Federal district court. Such an election must be made within 20 days after the receipt of the service upon such person of the charge filed by the Secretary. Upon notification that a person has elected to proceed to Federal district court the Secretary is directed to authorize the Attorney General to file a civil action on behalf of the aggrieved person or complainant. Such civil actions authorized by the Secretary must be brought within 30 days after the election is made.

Where no election is made, the case will be heard by the administrative law judge. Under section 812(c) of the Act the Federal Rules of Evidence will apply to the presentation of evidence in the same manner that they apply to evidence presented in a civil action in Federal district court. Section 812(g) requires the administrative law judge to issue findings of fact and conclusions of law within 60 days after the end of a hearing.

Where the administrative law judge finds that a respondent has engaged in a discriminatory housing practice the Fair Housing Act provides for the issuance of an order for such relief as is appropriate, which may include actual damages and injunctive or other equitable relief. In order to vindicate the public interest the order of an administrative law judge may assess a civil penalty against the respondent.

The decision of the administrative law judge can be reviewed by the Secretary. However, this review must be completed within 30 days after the decision is issued. Any final agency decision on the issue of discrimination is subject to review on appeal by the United States Courts of Appeal.

The Fair Housing Amendments Act directs the Secretary of Housing and Urban Development to issue regulations implementing the Fair Housing Act. Section 13 of the Fair Housing Amendments Act provides that "[I]n consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the enactment of this Act, issue rules to implement Title VIII as amended by this Act." That section also requires the Secretary to give notice and opportunity for comment with respect to such rules.

This Notice of Proposed Rulemaking provides the interpretation of the Secretary of Housing and Urban Development on the scope of the coverage provided and the nature of activities made unlawful by the Fair Housing Act. The Notice of Proposed Rulemaking also contains the procedures which will be applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings.

Specifically, the Department is proposing to add three new Parts to Subtitle B of Title 24 of the Code of Federal Regulations. A new Part 100 would describe the conduct made unlawful under the Fair Housing Act. A new Part 103 would set forth the procedures for the receipt, investigation and conciliation of complaints and for the issuance of charges commencing formal administrative proceedings. A new Part 104 would establish rules for the conduct of administrative hearings before administrative law judges and would provide rules of discovery in connection with such administrative proceedings.

The existing departmental regulations authorizing the Secretary to collect racial, sex and ethnic data in departmental programs, currently located at 24 CFR Part 100, would be redesignated as 24 CFR Part 121. This regulation would be revised to reflect the additional data requirements for HUD programs to meet the Department's responsibility to provide reports to Congress and to make available to the public data on persons eligible to participate and who are participating in HUD programs.

This Notice of Proposed Rulemaking also would make revisions in four existing departmental regulations implementing the Fair Housing Act to reflect the expansion of the coverage of the law to include provisions regarding handicap and familial status. Regulations affected by these changes are: Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 (24 CFR Part 106), Fair Housing Advertising (24 CFR Part 108), Fair Housing Poster (24 CFR Part 110) and for the Recognition of Substantially Equivalent Fair Housing Laws (24 CFR Part 115).

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Part 100 would be retitled "Unlawful Housing Practices Under The Fair Housing Act" and revised.

The new Part 100 would:

—Indicate the conduct which is made unlawful under the Fair Housing Act;

—Include guidance as to the responsibility of persons to permit reasonable modifications to dwellings and to make reasonable accommodations to rules and practices for persons with handicaps and further provide information as to the design and construction requirements applicable to certain new construction multifamily housing for first occupancy after March 13, 1991; and

—Describe the requirements which must be met for housing to be exempted from the prohibitions against discrimination based on familial status because it is housing for older persons.

Subpart A—General

Section 100.1 Authority.

The Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations implementing the provisions of the Fair Housing Act (42 U.S.C. 3600–3620). This section indicates that the regulations contained in Part 100 are being issued under the Secretary's authority for the administration and enforcement of the Fair Housing Act.

Section 100.5 Scope.

The Fair Housing Act provides, within constitutional limitations, for fair housing throughout the United States. It provides that no person shall, on the basis of race, color, religion, sex, handicap, familial status, or national origin be subject to discrimination in the sale, rental or advertising for sale or rental of dwelling, in the provision of brokerage services, or in residential real estate-related transactions. Section 100.5 (a) and (b) indicates that this part provides guidance as to the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate-related transactions.

The provisions of this part generally reflect the language of the statutory prohibitions against discrimination under the Fair Housing Act. The specific prohibitions in each section are amplified by examples of unlawful conduct under the provision. Many of

the practices identified in these sections of the proposed rule have been the subject of court decision since the passage of Title VIII of the Civil Rights Act of 1968. In other cases, the examples reflect the interpretation of HUD based on its experience in the investigation of complaints of discriminatory housing practices since 1968. However, it must be noted that the illustrations in Part 100 are only examples of the conduct made unlawful under the Fair Housing Act.

Although the prohibitions against discrimination because of handicap and familial status are new, the Department believes that it is appropriate to interpret the protections afforded these new classes in the same manner as the protections provided to others under provisions of the Fair Housing Act. However, the Fair Housing Act prohibitions against discrimination because of handicap provide protection only to persons who are handicapped. A housing provider does not violate the Fair Housing Act by restricting occupancy in dwellings to persons with handicaps and the exclusion of non handicapped persons from such dwellings would not constitute a discriminatory housing practice.

The determination to treat the new protected classes in the same manner also is supported by the development of fair housing law in the area of discrimination because of sex. In enacting the Housing and Community Development Act of 1974 Congress amended sections 804, 805, and 806 by adding sex to the classes of persons protected under Title VIII. (See section 808(b)(1) of the Housing and Community Development Act of 1974. Pub. L. 93–383.) Although there was no legislative history regarding this expansion of the coverage of the law, courts in deciding cases involving discriminatory housing practices because of sex have held that conduct found to be unlawful when based on race, color, religion or national origin was also unlawful when based on sex.

As discussed earlier in this preamble, Congress not only added the protections of the existing law to persons with handicaps but provided additional requirements with respect to the treatment of persons with handicaps. In the Fair Housing Amendments Act, in addition to the general prohibition against discrimination Congress further made it unlawful to refuse to permit reasonable modifications, to make reasonable accommodations or to design and construct certain new construction multifamily dwellings in a manner to make dwellings accessible to and usable by handicap persons. In this regard Subpart D of this rule provides guidance on the additional practices made unlawful under the Fair Housing Act.

Section 100.5(c) indicates that nothing in this part relieves persons participating in a Federal or Federally assisted program or activity from complying with other requirements applicable to buildings and dwellings under those programs or activities.

Section 100.10 Exemptions.

The Fair Housing Act exempts certain types of housing from the coverage of the law. Section 807 of the Fair Housing Act provides that under certain circumstances religious organizations and private clubs may limit the sale, rental or occupancy of housing, owned or operated for other than a commercial purpose, to their members. Section 807 also provides that nothing in the provisions regarding familial status applies to housing for older persons. Section 803 of the Fair Housing Act provides that nothing in the Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental by an owner of certain single family houses or to the rental of rooms in dwellings containing living quarters occupied by no more than four families, provided that the owner actually occupies one of the units. Section 100.10 of this part reflects these exemptions to the coverage of the law.

Section 100.10(a)(3) states that nothing in this regulation limits the applicability of any reasonable local, State or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. This paragraph incorporates into the regulation the revisions to section 807 of the Fair Housing Act contained in section 6(d) of the Fair Housing Amendments Act of 1988. That provision is intended to allow reasonable governmental limitations on occupancy to continue as long as they are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin. H.R. Rep. No. 711, 100th Congress, 2d Sess. 31 (1988) ("House Report").

Section 100.10(a)(4) provides that nothing in this part prohibits the refusal to sell or rent a dwelling or to otherwise make unavailable or deny a dwelling to a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). This exemption was intended to allow landlords to protect tenants by refusing to provide housing to persons convicted of distributing or manufacturing illegal drugs. The exemption must be based upon a conviction. It does not apply to those who are not convicted of a drug offense. One conviction is sufficient for the exemption. However, as in the case of the exemption for governmental restrictions on the number of persons occupying dwellings, this exemption cannot be applied in a selective of different manner to exclude persons because of race, color, religion, sex, handicap, familial status, or national origin. (134 Cong. Rec. S10468–9 (daily ed. August 1, 1988) (colloquy between Sen. Thurmond and Sen. Kennedy)).

This section also provides that the prohibitions against discrimination based on familial status do not apply to housing for older persons and indicates that the definition of housing for older persons is set forth in Subpart E of this part. Section 100.10 also contains the limited exemption from the applicability of the provisions of the Fair Housing Act, other than the prohibitions against discriminatory advertising, for the sale or rental of certain single family houses by an owner and for rentals of rooms in dwellings in which the owner also occupies a room (Mrs. Murphy housing).

Section 100.20 Definitions.

Section 100.20 proposes definitions to be used for terms in this part.

The term "aggrieved person" means any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur. (Aggrieved person includes a fair housing organization as well as a tester or other person who seeks information about the availability of dwellings to determine whether discriminatory housing practices are occurring.)

A "broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

A "discriminatory housing practice" is defined as an act that is unlawful under section 804, 805, 806, or 818. The definition of discriminatory housing practices reflects the addition of unlawful interference, coercion or intimidation in connection with housing under section 818 of the Fair Housing Act (formerly section 817 of Title VIII of the Civil Rights Act of 1968) as a discriminatory housing practice which

can be a basis for a complaint under the Fair Housing Act.

A "dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or indivduals, or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The definition would also indicate that the protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" means any person defined as handicapped under § 100.201 of Subpart D of this part.

The term "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

A "person in the business of selling or renting" is any person who:

(1) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) Within the preceding twelve months, has participated as agent, other than in the sale of their own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Section 100.20 also contains definitions of the terms "Secretary", "State" and "Department".

Subpart B—Discriminatory Housing Practices

Section 100.50 Real estate practices prohibited.

This section of the rule indicates that Subpart B contains the Department's interpretation of the conduct made unlawful under section 804 and section 806 of the Fair Housing Act. In general, these provisions describe conduct made unlawful with regard to any aspect related to the sale, rental, or advertising of dwellings and to the provision of brokerage services and facilities in connection with the sale or rental of dwellings.

Section 100.50(b) enumerates the specific conduct made unlawful in relation to the sale or rental of dwellings. The conduct described in this section forms the basis for the subsequent sections in this subpart. Each of the following sections provides illustrations of the scope and applicability of the rule to specific sales, rental and brokerage activities.

While the illustrations are set forth under the section of this subpart which is most applicable to the discriminatory conducted described, § 100.50 indicates that an action described in one section can constitute a violation under other sections as well. In addition, it should be noted that the illustrations of discriminatory conduct in this subpart are only examples of discriminatory conduct which violates the Fair Housing Act and are not intended to limit the scope of discrimination in housing made unlawful under the Fair Housing Act.

Section 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

This section of the rule describes the activities which constitute a refusal to sell or rent to a *bona fide* homeseeker or a refusal to negotiate with persons for the sale or rental of dwellings and which are unlawful when they are taken because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations in § 100.60(b)(3) through (6) are intended to indicate the Department's position that certain activities in which different treatment is provided to persons because of race, color, religion, sex, handicap, familial status, or national origin also can be tantamount to an unlawful refusal to negotiate under this section.

Section 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

Section 100.65 indicates that differences in the treatment of persons in connection with the provision of services and facilities or in the terms or conditions relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin constitute a discriminatory housing practice.

The illustrations in § 100.65(b) indicate that the coverage of this section extends beyond restrictions or differences in a lease or sales contract and the provision of different maintenance. This section would provide that denials of, or limitations on the amount of discounts, rebates or gifts, or on the use of privileges, services or facilities relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin are also discriminatory housing practices.

Section 100.70 Other prohibited sale and rental conduct.

This section would indicate that restricting or attempting to restrict the housing choices of persons as well as engaging in any conduct relating to the sale or rental of a dwelling that otherwise makes unavailable or denies dwellings because of race, color, religion, sex, handicap, familial status, or national origin, is a discriminatory housing practice.

Section 100.70(c) describes actions which result in limitations of housing choice which would violate the Fair Housing Act. These practices, which are commonly referred to as "steering", include practices designed to discourage persons from seeking housing in a particular community, neighborhood, or development in addition to those used to direct or assign persons to a particular community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

With respect to practices which otherwise make unavailable or deny a dwelling, the illustrations focus primarily on activities with respect to the sale or rental of dwellings which may not be taken against a specific person but nonetheless result in housing being made unavailable to persons because of race, color, religion, sex, handicap, familial status, or national origin. This section indicates, for example, that a policy of encouraging or rewarding discriminatory housing practices or of taking adverse actions

against employees refusing to participate in such discriminatory practices would violate the Fair Housing Act. In these cases, the actions taken will result in a limitation on the housing opportunities and choices available to persons.

This section also states that the denial of the approval of an otherwise qualified person by a cooperative association because of race, color, religion, sex, handicap, familial status, or national origin which results in the inability of a person to complete a sale or rental transaction constitutes a violation of the Fair Housing Act. This example illustrates the broad reach of the "otherwise make unavailable" language in the Fair Housing Act which covers the denial of benefits essential to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

In view of the broad reach of the "otherwise make unavailable" language in the Fair Housing Act, it is especially important to note that the illustrations in this subpart are only examples of discriminatory conduct and are not intended to limit the scope of discrimination in housing made unlawful under the Act. For instance, although not set forth as an example in this subpart, discrimination in the provision of services and facilities which are prerequisites to obtaining dwellings, including discriminatory refusals to provide municipal services or adequate property or hazard insurance as well as discriminatory appraisal and financing practices, has been interpreted by the Department and by courts to render dwellings unavailable under the "otherwise make unavailable" in the Fair Housing Act.

The language regarding the "otherwise make unavailable" provisions of the Fair Housing Act has not been interpreted to impose upon private individuals an affirmative obligation to construct or offer housing of a particular type or cost. Rather, a private individual's decisions based solely on legitimate business reasons other than race, color, religion, sex, handicap, familial status or national origin will not violate the Act. Thus, for example, a private developer's market-based decision to include only efficiency apartments in a development would not violate the Act solely because, as a practical matter, such housing would be unavailable to families with children. For that reason, the unlawful conduct described in this section does not include such actions. The obligations of developers to make new multifamily housing accessible to handicapped persons are addressed in § 100.205.

Section 100.75 Discriminatory advertisements, statements, and notices.

Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department believes it is appropriate in connection with regulations describing prohibited conduct related to the sale or rental of housing to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.75 describes prohibited conduct related to advertisements, notices and statements, by persons engaged in the sale or rental of housing or in the printing and publishing of such advertisements, notices and statements.

Section 100.80 Discriminatory representations on the availability of dwellings.

Section 100.80 indicates that the provision of inaccurate or untrue information about the availability of dwellings for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin constitutes a violation of the Fair Housing Act. In this regard, it should be noted that a person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice under this section.

Section 100.85 Blockbusting.

Blockbusting consists of any effort, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into a neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Section 100.85(b) indicates it is not necessary that there be in fact a profit realized as a result of blockbusting as long as the availability of profit was a factor involved in the blockbusting activity. In addition, the illustrations of unlawful blockbusting activity include uninvited solicitations for listings in a neighborhood which are different than uninvited solicitations in other neighborhoods because of the race, color, religion, sex, handicap, familial status, or national origin of the neighborhood.

Section 100.90 Discrimination in the provision of brokerage services.

This section reflects the prohibition in the Fair Housing Act against denying any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization or facility relating to the business of selling or renting dwellings. This section also indicates that it is unlawful to discriminate against any person in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

Section 100.110 Discriminatory practices in residential real estate-related transactions.

Section 100.110 indicates the general prohibition against discrimination in the availability of, or in the terms or conditions imposed in any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin. The prohibitions against discrimination in this subpart apply to any person or other entity whose business includes engaging in residential real estate-related transactions.

Section 100.115 Residential real estate-related transactions.

This section incorporates into this part the definition of the term "residential real estate transaction" contained in section 6(c) of the Fair Housing Amendments Act of 1988.

Section 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

This section indicates that it is unlawful for a person or entity engaged in residential real estate transactions to discriminate against persons because of race, color, religion, sex, handicap, familial status, or national origin in making available loans and other financial assistance relating to dwellings. The prohibitions against discrimination in the making of loans and in the provision of other financial assistance reflects the language relating to discrimination in the financing of housing under Title VIII of the Civil Rights Act of 1968.

In connection with the development of the illustrations of activities which would constitute discriminatory practices under the Fair Housing Act relating to the making available of loans and other assistance the Department has been guided by its experiences in connection with the administration and enforcement of the current law.

The definition of the term residential real estate-related transactions includes

loans and other financial assistance which are secured by residential real estate. This revision expands the types of financing transactions which are covered by the nondiscrimination requirements of Title VIII of the Civil Rights Act of 1968. However, there is nothing in the legislative history of the Fair Housing Amendments Act of 1988 which indicates that the Congress intended that loans and other assistance secured by a dwelling be treated any differently than loans for the purchase, construction, improvement, repair, or maintenance of a dwelling. Thus, the illustrations in this section apply equally to both types of loans.

The illustrations of unlawful conduct under this section include the making of statements, notices and advertisements which indicate a preference of an intention to make a preference because of race, color, religion, sex, handicap, familial status, or national origin. Although the Fair Housing Advertising Regulation (24 CFR Part 109) applies to all advertising for dwellings, the Department has determined that it is appropriate in connection with regulations describing prohibited conduct related to residential real estate-related transactions to include additional guidance as to prohibited conduct in the making of advertising, notices and statements regarding this specific area. Section 100.120(b)(3) describes prohibited conduct related to advertisements, notices and statements in connection with residential real estate-related transactions.

Section 100.125 Discrimination in the purchasing of loans and other financial assistance.

The principal change in the nature of the conduct made unlawful regarding loans and other assistance with respect to dwellings is the inclusion of activities relating to the purchase of such loans. In prohibiting discrimination in the purchasing of loans Congress extended the coverage of the Fair Housing Act to conduct in the secondary mortgage market. The House Report on the Fair Housing Amendment Act of 1988 states, with regard to this expanded coverage however, that "[T]he Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity (including requirements of Federal law) which relate to the financial security of the transaction or the protection against default or diminution in the value of the property." (House Report at 30).

Section 100.125 indicates the new coverage of secondary mortgage market activities under the Fair Housing Act. Since the protections provided under this section are new, the illustrations of discriminatory housing practices in this section focus on general areas of unlawful conduct under the Act. In this respect, the illustrations indicate that conduct made unlawful with regard to secondary mortgage market activities include actions taken with respect to the purchase and pooling of loans as well as the terms and conditions of the sale of securities issued based on such loans.

Section 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

Section 100.130 indicates that it is unlawful to impose different terms or conditions for the availability of a loan or other financial assistance for a dwelling or which is, or will be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations of the unlawful activities indicate that requirements, procedures, policies or practices relating to loans or other financial assistance which are different or imposed in a different manner because of race, color, religion, sex, handicap, familial status, or national origin are discriminatory housing practices. This section also indicates that imposing different loan provisions (such as the interest rate or the duration of the loan), or providing different types of loans because of race, color, religion, sex, handicap, familial status, or national origin are unlawful.

In addition, § 100.130(b)(4) indicates it is unlawful to fail to make available a loan or other assistance because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area of the dwelling for which the loan or other financial assistance is sought, or in the area in which the dwelling which is provided as security for the loan or other assistance is located.

The practice of refusing to make loans or certain types of loans or other assistance for dwellings in particular areas has been generally referred to as "redlining". However, the determination of the nature and types of loans and other financial assistance to be offered by a person or entity engaged in residential real estate-related transactions in many cases involves legitimate business judgments and complex financial, economic and social issues and problems. Unless the failure to provide loans or other assistance to a particular area is because of the race, color, religion, sex, handicap, familial status, or national origin of persons, it does not violate the Fair Housing Act. In order to avoid confusion as to the nature of conduct prohibited under the Fair Housing Act the term redlining has not been used in this section of the rule.

Section 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

The prohibitions against discrimination because of race, color, religion, sex, handicap, familial status, or national origin in connection with residential real estate-related transaction apply to the selling, brokering and appraising of residential real property. Section 100.135 states that it is unlawful for any person whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such activities, or in the terms or conditions of such activities because of race, color, religion, sex, handicap, familial status, or national origin.

For the purpose of this rule the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or with any other residential real estate-related transactions, whether the appraisal is oral or written, or transmitted formally or informally.

While the Fair Housing Act provides a specific exemption for appraisals stating that nothing in the Act prohibits a person in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin, the illustrations of unlawful conduct make clear that consideration of any factor because of race, color, religion, sex, handicap, familial status, or national origin *does* constitute a discriminatory housing practice.

Section 100.135(d)(3) would provide that it is unlawful, in a commercial context, by either statements or conduct, to instruct or encourage any person, or to impose standards requiring such person, to consider any factor in making an appraisal of a dwelling which relates to race, color, religion, sex, handicap, familial status or national origin. This illustration is intended to cover, among other activities, instruction or training of appraisers by professional appraiser associations, or the adoption of discriminatory appraisal standards by governmental agencies providing home mortgage financing. By limiting its application to activities undertaken in a

commercial context, the Department intends to indicate that activities which may be subject to First Amendment protections, such as the publication of treatises, articles, etc., regarding appraisal theory or practices, are excluded from coverage.

In addition, § 100.135(d)(4) provides that it is unlawful for any person to (a) use any appraisal or appraisal report if such person knows or reasonably should know that the appraisal takes into account a factor or factors based on race, color, religion, sex or national origin, or (b) use any information relating to race, color, religion, sex, handicap, familial status or national origin which is contained in an appraisal report. This rule is intended primarily to prohibit lenders or other persons who engage in residential real estate-related activities from utilizing a discriminatory appraisal, or information relating to race, color, religion, sex, handicap, familial status, or national origin contained in an appraisal report, in determining the eligibility or the terms and conditions for financing. This illustration would also relate to other persons, such as real estate brokers, who might use an appraisal report in establishing the sales price of a dwelling.

Subpart D—Prohibitions Against Discrimination Because of Handicap

The Fair Housing Amendments Act of 1988 extended the principle of equal housing opportunity to persons with handicaps. The Act makes "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals." House Report at 18. The Act makes it unlawful to discriminate or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that individual, someone associated with that individual, or of a resident or potential resident (section 804(f)(1)). It also prohibits discrimination against the same person in the terms, conditions, or privileges of sale or rental, or provision of services or facilities (section 804(f)(2)). It requires that persons with handicaps be permitted to make reasonable modifications, at their expense, to existing premises to afford them full enjoyment of the premises (section 804(f)(3)(A)). It also requires that after March 13, 1991, new multifamily dwellings of four or more units be designed and constructed to allow ready access to and use by persons with handicaps (section 804(f)(3)(C)).

Section 100.200 Purpose.

Section 100.200 explains that the purpose of Subpart D is to effectuate the provisions concerning handicap in the Fair Housing Amendments Act of 1988.

Section 100.201 Definitions.

Section 100.201 proposes definitions to be used for terms used only in subpart D. The definitions in subpart A also apply to subpart D.

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this definition.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route". This definition is consistent with the definition of "accessible route" in ANSI A117.1.

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. The American National Standards Institute, Inc. (ANSI) is a private, national organization that publishes standards on a wide variety of subjects. The Secretariat that developed the 1986 edition of the ANSI standard was composed of the National Easter Seal Society, the President's Committee on Employment of the Handicapped, and HUD. The current version of these standards was published in 1986 and is referred to as "ANSI A117.1–1986". Whenever ANSI A117.1 is used in subpart D, the reference is to the most recently published edition of ANSI A117.1 as of the date bids for construction of a particular building are solicited.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units. For example, a structure that serves one or more dwelling units includes a structure containing recreational facilities for residents of an apartment complex.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site accessible to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this definition.

"Common use areas" means rooms, spaces or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units. A single structure consisting of 5 two-story townhouses is not a "covered multifamily dwelling" if the units do not have elevators because the entire dwelling unit is not on the ground floor.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit. The term exterior is used in the definition of "premises".

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment. However, this term does not include current, illegal use of or addiction to a controlled substance. The term also does not include an individual solely because that individual is a transvestite. Paragraphs (a), (b), (c) and (d) of the definition clarify the key phrases in the definition: "physical or mental impairment"; "major life activities"; "has a record of such an impairment"; and "is regarded as having an impairment".

With the exception of current, illegal use of or an addiction to a controlled substance, the definition of "handicap" in the Act is very similar to the definition of the term "individual with handicaps" in the Rehabilitation Act of 1973. 29 U.S.C. 706. Congress intended that the definition of "handicap" in the Fair Housing Amendments Act to be interpreted in a manner that is consistent with regulations interpreting the meaning of the similar provision found in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. House Report at 22; 134 Cong. Rec. S10492 (daily ed. August 1, 1988) (statement of Sen. Chafee); 134 Cong. Rec. H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi); 134 Cong. Rec. H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder).

Section 504 of the Rehabilitation Act prohibits discrimination against otherwise qualified individuals with handicaps in programs or activities receiving federal financial assistance as well as in federally conducted programs and activities. The Department of Justice section 504 coordination regulation for federally assisted programs is at 28 CFR Part 41. HUD's section 504 regulation for federally assisted programs is at 24 CFR Part 8. Paragraphs (a), (b), (c) and (d) of the definition of "handicap" closely follow the definitions of these key phrases used in regulations interpreting section 504.

Paragraph (a) of the definition of "handicap" in § 100.201 closely follows the definition in HUD's section 504 regulation for federally assisted programs and activities (24 CFR 8.3), except that this rule's definition does not include drug addiction caused by current illegal use of a drug that is a controlled substance. Section 5(b) of the Fair Housing Amendments Act expressly excludes from the definition of "handicap" current, illegal use of or addiction to a controlled substance, as defined by the Controlled Substances Act (21 U.S.C. 802). The legislative history of the Fair Housing Amendments Act demonstrates that the Act does not exclude from protection persons who take controlled substances for a medical condition under the care of, or by prescription from, a physician. Use of a medically prescribed drug does not constitute illegal use of a controlled substance. Similarly, individuals who have a record of drug use or addiction but do not currently use illegal drugs would continue to be protected if they fell within the definition of "handicap." It is not the intent of the Act to exclude from protection individuals who have recovered from an addiction or are participating in a self-help group. House Report at 22; 134 Cong. Rec. S10553 (daily ed. August 2, 1988) (statement of Sen. Domenici). However, individuals who are participating in a self-help group (*e.g.*, Narcotics Anonymous) are not automatically thereby included within the definition of "handicap." Rather, they are protected only if they fall within the definition of "handicap," *i.e.*, they are not illegally using controlled substances.

Paragraph (b) defines the term "major life activities" the same way the concept is defined in regulations implementing section 504. A major life activity includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Paragraph (c) defines the phrase "has a record of such an impairment" as that phrase is used in the definition of handicap. A person who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities is a handicapped person under the Fair Housing Act.

Paragraph (d) defines the phrase "is regarded as having an impairment" to mean a person who:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) but is treated by a person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit. The term "interior" is used in § 100.203 relating to modifications of existing premises and in the definition of "premises". The kitchen and bathroom of an apartment are examples of elements of a dwelling unit and are also part of the "interior" of the premises.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building or a dwelling unit, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

Section 100.202 General prohibitions against discrimination because of handicap.

Section 100.202 contains the general prohibitions against discrimination because of handicap and serves as the analytical foundation for the remaining sections of the subpart. The remaining sections of Subpart D explain in greater detail what conduct is discriminatory. Thus, whenever a person has violated any of the subsequent sections of Subpart D, that person has also violated § 100.202.

Paragraph (a) restates the Fair Housing Amendments Act's mandate of nondiscrimination in the sale or rental of dwellings. Under paragraph (a), it is unlawful to discriminate against any person in the sale or rental of or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made unavailable, or any person associated with that buyer or renter. Under this provision, a landlord may not, for example, refuse to rent to an individual solely because the applicant uses a wheelchair or has a history of physical or mental illness.

Paragraph (b) restates the Act's ban of discrimination in the terms, conditions, or privileges of the sale or rental of a dwelling. Paragraph (b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap of that

buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person. This provision is intended to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps. Under this provision it is unlawful to bar discriminatorily a person with handicaps from access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners. House Report at 23.

Paragraphs (a) and (b) prohibit not only discrimination against the primary purchaser or named lessee, but also prohibit denials of housing opportununities to applicants because they have children, parents, friends, spouses, roommates, patients subtenants or other associates who have disabilities. House Report at 24.

The legislative history of the Fair Housing Amendments Act makes it clear that the Act was intended to prohibit landlords and owners for asking prospective tenants and buyers blanket questions about the individuals' disabilities. The House Report explains that the approach taken in section 504 regulations dealing with pre-employment inquiries should apply also to the Fair Housing Amendments Act. House Report at 30. Under section 504 regulations, employers may not inquire, as part of pre-employment inquiries, whether an applicant is a handicapped person. Employers may only make preemployment inquires into an applicant's ability to perform job-related functions. *See* 45 CFR 84.14; 24 CFR 8.13.

Paragraph (c) is an adaptation of the "pre-employment inquiries" provisions in section 504 regulations; it prohibits inquiries to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person has a handicap or to make inquiry as to the nature or severity of a handicap of such person.

Paragraph (c) also states that it does not prohibit five types of inquires, provided these inquiries are made of all applicants, whether or not they have handicaps.

Paragraph (c)(i) clarifies that a housing provider may inquire into an applicant's ability to meet the requirements of ownership or tenancy. Thus, in assessing an application for tenancy, a landlord or owner may ask an individual the question that he or she asks of all other applicants that relate directly to the tenancy (*e.g.*, questions relating to rental history or a targeted inquiry as to whether the individual has engaged in acts that would pose a direct threat to the health or safety of other tenants), but may not ask an applicant blanket questions with regard to whether the individual has a disability. A housing provider may also not ask an applicant questions which would require the applicant to waive his or her right to confidentiality concerning his or her medical condition or history. House Report at 30.

Paragraph (c) (ii) states that paragraph (c) does not prohibit inquiry to determine whether an applicant is qualified for a dwelling that is available only to persons with handicaps or to persons with a particular type of handicap. The Fair Housing Amendments Act does not prohibit the exclusion of non-handicapped persons from dwellings. A housing facility may lawfully restrict occupancy to persons with handicaps. For example, some Federal and State housing programs are designed for, and occupied by, persons with handicaps. Only persons with handicaps are eligible to live in such dwellings. The owner or operator of such a housing facility may inquire of applicants to determine whether they have a handicap for the purpose of determining eligibility.

Paragraph (c)(iii) provides that paragraph (c) does not prohibit an inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap. A housing provider may choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority. For example, a housing provider may offer accessible units to persons with mobility impairments on a priority basis and may ask applicants whether they have a mobility impairment which would qualify them for such a priority.

Paragraph (c)(iv) provides that paragraph (c) does not prohibit inquiring whether an applicant for a dwelling is a current illegal abuser of or addict to a controlled substance. The definition of "handicap" in the Fair Housing Amendments Act does not include current, illegal use of or addiction to a controlled substance. *See* House Report at 30.

Paragraph (c)(v) provides that paragraph (c) does not prohibit inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. Section 807(b)(4) of the Fair Housing Act states that nothing in the Act prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

Paragraph (d) restates new section 804(f)(9) of the Fair Housing Act which provides that nothing in section 804(f) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. This provision was included "to allay the fears of those who believe that the non-discrimination provisions of this Act could force landlords and owners to rent or sell to persons whose tenancies could pose such a risk." House Report at 28 (footnote omitted). However, this provision was not intended to create or permit a presumption that individuals with handicaps generally pose a greater threat to the health or safety of others than do individuals without handicaps.

In adopting this provision, the House Committee on the Judiciary affirmed that all individuals with handicaps, with the exception of current illegal abusers of or addicts to controlled substances, are entitled to the protections under the Act. *Id.* This approach differs in one significant respect from that taken in the Rehabilitation Act of 1973. The definition of "individuals with handicaps" in the Rehabilitation Act does not *per se* exclude persons who currently, illegally use or are addicted to a controlled substance. The Rehabilitation Act's definition of "individuals with handicaps" excludes, with regard to employment, "any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." 29 U.S.C. 706(8)(B).

With respect to individuals with contagious diseases and infections, section 804(f)(9) is, however, parallel to the corresponding provision of the Civil Rights Restoration Act of 1988 (CRRA) (Pub. L. 100–259, 102 Stat. 28 (March 22, 1988)). Section 9 of the CRRA amended the Rehabilitation Act's definition of "individuals with handicaps" further to exclude, for purposes of section 504 as it relates to employment, "an individual who has a currently contagious disease

or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job."

The provision was added to the CRRA in order to codify the decision of the Supreme Court in *School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987). House Report at 29.

In *Arline*, a case involving an allegation of employment discrimination under section 504, the Supreme Court held that a person who has the contagious disease of tuberculosis can be an "individual with handicaps" within the meaning of section 504. 107 S.Ct. at 1132. The Court in *Arline* further explained that an employee "who poses a significant risk of communicating a contagious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk." 107 S.Ct. at 1131, n. 16.

The legislative history of the Fair Housing Amendments Act indicates that the "direct threat" language restated in paragraph (d) should be interpreted consistently with *Arline*. House Report at 29.

The House Report states that "[w]hile *Arline* dealt with employment in the context of section 504, the Committee intends that same standard to apply in the context of housing under this Act. Thus, the direct threat requirement incorporates the *Arline* standards, and a dwelling need not be made available to an individual whose tenancy can be shown to constitute a direct threat and a significant risk of harm to the health or safety of others." *Id.* However, if a reasonable accommodation could eliminate the risk, entities covered by the Act are required to provide such accommodation under § 100.203. *Id.*

The provision concerning direct threat posed by an individual's tenancy is formulated to require that the landlord or property owner establish a nexus between the fact of the particular individual's tenancy and the asserted direct threat. Any claim that an individual's tenancy poses a direct threat and substantial risk of harm must be established on the basis of objective evidence, *e.g.*, a history of overt acts or current conduct. Generalized assumptions, subjective fears, and speculation are insufficient to prove the requisite direct threat. For instance, if a landlord determines, by objective evidence that is sufficiently recent to be credible, and not from unsubstantiated inferences, that the applicant will pose a direct threat to the health or safety of others, the landlord may reject the applicant as a tenant. In assessing information, the landlord may not infer that a history of a physical or mental illness or disability, or treatment for such illnesses or disabilities, constitutes proof that an applicant will be unable to fulfill his or her tenancy obligations. House Reports at 29–30.

Paragraph (d) also states that nothing in subpart D requires that a dwelling be made available to an individual whose tenancy would result in "substantial physical damage to the property of others." The legislative history of this provision makes it clear that this provision was intended to be read in conjunction with the other provisions in the Act providing access for persons in wheelchairs. 134 Cong. Rec. S 1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). Thus, this provision should not be construed to allow a landlord to exclude a person in a wheelchair because of effects of using a wheelchair upon property. For example, the normal wear and tear to a dwelling unit that might be expected on the part of an individual who uses a wheelchair, such as the nicking of doorframes or of walls, would *not* constitute "substantial" physical damage within the meaning of paragraph (d). 134 Cong. Rec. H4932 (daily ed. June 29, 1988) (statement of Rep. Edwards); 134 Cong. Rec. S1064 (daily ed. August 1, 1988) (statement of Sen. Harkin). In addition, the individual's tenancy would have to be shown to cause substantial physical harm to significant pieces of property. Thus, the fact that a person might damage some piece of property would also not be sufficient to trigger this provision. *Id.*

Section 100.203 Reasonable modifications of existing premises.

Paragraph (a) implements section 804(f)(3)(A) of the Fair Housing Act, as amended. Under paragraph (a), it is illegal to refuse to permit tenants with disabilities to make reasonable modifications, at their expense, of existing premises if the proposed modifications are necessary for their full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter ageeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The premise of § 100.203 is that a housing provider's refusal to allow reasonable modifications "operates, at worst, to deny housing to handicapped persons, and, at least, to deny them the opportunity to enjoy their premises safely and fully." House Report at 25. The term "full enjoyment" was used because Congress recognized "that the nature of individual handicaps, and therefore the potential need for environmental modifications varies greatly." *Id.* The Department wishes to stress that any modifications protected by this section must be reasonable and must be made at the expense of the individual with handicaps.

Paragraph (a) allows reasonable modifications at the expense of the individual with handicaps to existing "premises". "Premises" is defined in § 100.201 to mean the interior or exterior parts, components or elements of a building or a dwelling unit, including the public and common use areas of a building. Thus, an individual with handicaps would be able, at his or her own expense, to make reasonable accommodations to lobbies, main entrances of apartment buildings, laundry rooms and other common and public use areas necessary to the full enjoyment of the premises. The Department has proposed to define the term "premises" to encompass the public and common use areas because it appears that this is what Congress intended. The Act allows reasonable modifications of "existing premises" if necessary to afford the handicapped person full enjoyment of the premises. If the laundry room is not accessible, for example, a person with a mobility impairment will not have "full enjoyment" of the premises.

Beyond this, section 15 of the Fair Housing Amendments Act provides that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the *interior* of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The use of the word "interior" in the language of the Act dealing with the restoration of modifications, but not in the language allowing reasonable modifications of existing "premises" further indicates that Congress intended that the term "premises" encompass public and common use areas as well as individual dwelling units. Of course, modifications to public and common use areas must be reasonable and must be made at the expense of the individual with handicaps.

It also follows from the language of section 15 of the Fair Housing Amendments Act that landlords may not condition approval of modifications to the premises on the renter agreeing to restore the "exterior" of the premises to the condition that existed before the

modification. Since the term "interior" is not defined in the Fair Housing Amendments Act the distinction between "interior" and "exterior" must be addressed in this subpart.

The term "interior of the premises" in section 15 of the Fair Housing Amendments Act may have two possible meanings. The term "interior" might be interpreted to refer to any area "inside" existing premises (*i.e.*, not out-of-doors), whether the area is an individual dwelling unit or a public or common use area. If the term is interpreted in this way then a landlord would be able to condition permission for a modification on the renter agreeing to restore any area located "inside" existing premises to the condition that existed before the modification, where it is reasonable to do so. For example, under this possible interpretation a landlord could, where it is reasonable to do so, condition permission for modifications to a lobby on the renter agreeing to restore the lobby to the condition that existed before the modification. However, under this interpretation the landlord would not be able to condition permission on the renter agreeing to restore a public or common use area located in the exterior portion of existing premises (*e.g.*, a curb cut or ramp to a building entrance) to the condition that existed before the modification.

In the alternative, the word "interior" might refer to the interior space of an individual dwelling unit but not to public and common use areas, whether located on the "inside" or "outside" of existing premises. Under this interpretation, the landlord would not be able to condition permission for making a modification on the renter agreeing to restore any public or common use area to the condition that existed before the modification.

The Department proposes to adopt the second interpretation of the term "interior" discussed above because the Department believes that the phrase "interior of the premises" in section 15 of the Fair Housing Amendments Act was intended to distinguish between individual dwelling units and public and common use areas rather than between elements of premises that happen to be in or out of doors. Section 15 was added to the Fair Housing Amendments Act on the Senate floor near the end of the legislative process. As a result, there is little legislative history on section 15. Nonetheless, the examples of modifications that a landlord may require that a tenant restore that were discussed during the Senate debate of section 15 all concern the restoration of modifications made to elements of individual dwelling units. 134 Cong. Rec. S10548 (daily ed. August 2, 1988) (statements of Sens. Kennedy and Specter).

Further, the examples in the legislative history indicate that it would not be reasonable for a landlord to condition permission for modifications on the tenant agreeing to restore the premises to the condition that existed before the modifications, where the modifications will not interfere with the use and enjoyment of the dwelling unit by future occupants. Some modifications to an individual dwelling unit might interfere with or detract from the use and enjoyment of the dwelling unit by future occupants. For example, if a tenant with a handicap seeks permission to modify the bathroom walls in order to install grab bars it would be reasonable for the landlord to require that the walls to which the grab bars are to be attached be restored to their original condition, reasonable wear and tear excepted. The grab bars might interfere with or detract from the next tenant's use and enjoyment of the bathroom. However, if it is necessary to add blocking behind the walls to affix the grab bars, it would be unreasonable for the landlord to require the tenant to remove the blocking since the reinforced walls will not interfere with the use and enjoyment of the premises by future occupants. *Id.* (statement of Sen. Kennedy).

The Department does not believe that *reasonable* modifications to public and common use areas would detract significantly from the public and common use areas modified and indeed may be of benefit to other persons with and without handicaps. Moreover, this should be the case whether the public or common use area is on the inside or on the outside of a structure. For example, an accessible building entrance, laundry room or curb would not significantly detract from, and indeed may enhance, the use and enjoyment of the lobby, laundry room or curb by persons with and without handicaps. An accesible element may be easier and more convenient for everyone to use. Furthermore, if a specific modification to a public or common use area proposed by a tenant with a handicap can reasonably be expected to interfere significantly with the use or enjoyment of the public or common use area in question by persons without handicaps then the proposed modification would not be reasonable.

For the foregoing reasons, "interior" is defined in § 100.201 as the spaces, parts, components or elements of an individual dwelling unit. Thus, the "interior of the premises" *excludes* all public and common use areas, including lobbies, laundry rooms, party rooms, as well as curbs and outside elements of a premises. It follows that under § 100.203(a) of the proposed rule a landlord could, where it is reasonable to do so, condition approval of modifications to an individual dwelling unit on the renter agreeing to restore the dwelling unit to the condition that existed before the modification. However, a landlord would *not* be able to condition approval of modifications to public or common use areas on the tenant agreeing to restore the public or common use area to the condition that existed before the modification and would *not* be permitted to charge such tenants an additonal security deposit. The Department specifically invites public comment on these issues.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The first example involves a tenant who seeks the permission of a landlord to install grab bars in the bathroom. The second example relates to an applicant for rental housing who has a child who uses a wheelchair and seeks the permission of the landlord to widen the bathroom door. Both examples are close adaptations of the examples specifically discussed by Senators Kennedy and Specter during Senate debate of the Fair Housing Amendments Act. 134 Cong. Rec. S10548 (daily ed. August 2, 1988). These examples are illustrative and not exhaustive.

Section 100.204 Reasonable accommodations.

Section 100.204 implements section 804(f)(3)(B) of the Fair Housing Act which makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services if necessasry to afford a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" is also used in regulations and case law interpreting section 504 of the Rehabilitation Act of 1973. *See,* 28 CFR 41.53; 24 CFR 8.11 and 8.33; *Southeastern Community College v. Davis,* 442 U.S. 397 (1979); *Alexander v. Choate,* 469 U.S. 287 (1985). The legislative history of the Fair Housing Amendments Act indicates that this was the source from which the concept of "reasonable accommodation" was drawn. House Report at 25; 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens). The term "reasonable" means that "feasible, practical modifications" must be made,

"but that extreme, infeasible modifications are not required." 134 Cong. Rec. H4923 (daily ed. June 29, 1988) (statement of Rep. Owens).

Paragraph (b) illustrates the application of paragraph (a) with two examples of reasonable accommodations.

Section 100.205 Design and construction requirements.

Section 100.205 implements section 804(f)(3)(C) of the Fair Housing Act which places "modest accessibility requirements on 'covered multifamily dwellings' designed and built for first occupancy 30 months after enactment." House report at 25.

The term "covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if the building has one or more elevators and "ground floor" dwelling units in other buildings consisting of 4 or more dwelling units. The ground floor is any floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. A "building" is a structure, facility or the portion thereof that contains one or more dwelling units.

Paragraph (a) requires that "covered multifamily dwellings" for first occupancy after March 13, 1991 be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The legisltative history makes it clear that Congress "was sensitive to the possibility that certain natural terrain may pose unique building problems." House Report at 27. For example, some sites cannot be made accessible because of hilly terrain. In some locales it is common to construct housing on stilts because of flooding problems. A requirement that housing on such sites have an accessible entrance on an accessible route would be tantamount to prohibiting the construction of covered multifamily housing on such sites. This is not what Congress intended. Thus, paragraph (a) requires that a "covered multifamily dwelling" for first occupancy after March 13, 1991 have an accessible entrance on an accessible route unless it would be impractical to do so. The Department expects that it will be feasible and practical for the vast majority of covered multifamily dwellings to have at least one accessible building entrance on an accessible route. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed and constructed the housing facility. Residents of such buildings would, of course, be able to make reasonable modifications at their own expense to accommodate any other disabilities, as permitted under §100.203(a).

An "entrance" means any access point to a building or portion of a building used by residents for the purpose of entering. Thus, a service entrance would not qualify as an entrance under the proposed rule because it is not used by residents. Handicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps.

Paragraph (b) contains three examples that illustrate the application of paragraph (a). The first two examples are drawn from examples in the Report of the House Committee on the Judiciary. *See* House Report at 27.

Paragraph (c) requires that all covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route satisfy certain accessibility requirements set forth in paragraph (c). If, in accordance with paragraph (a), a covered multifamily dwelling does not have an accessible entrance on an accessible route because it is impractical to do so because of the terrain or unusual characteristics of the site then none of the units in the building are required to meet the accessibility requirements in paragraph (c). Since, in these relatively infrequent cases, persons with mobility impairments will not be able to enter the building there is no reason to require that the building and the dwelling units therein satisfy the accessibility requirements of paragraph (c).

The accessibility requirements of paragraph (c) apply to all "covered multifamily dwellings" for first occupancy after March 13, 1991 with an accessible entrance on an accessible route. Thus, all of the dwelling units in elevator buildings consisting of 4 or more dwelling units must be accessible. Furthermore, the "ground floor" dwelling units in non-elevator buildings with 4 or more units must be accessible. The definition of ground floor is functional: The ground floor is any floor that has an accessible entrance. That is, if persons with mobility impairments are able to enter a floor of a building through an accessible route, then the dwelling units on that floor must be designed and constructed in accordance with the accessibility requirements of paragraph (c).

The remainder of paragraph (c) sets forth the sepcific accessibility requirements for covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route. The Department intends to publish proposed accessibility guidelines to help builders understand and comply with the specific accessibility requirements of the Fair Housing Act. The guidelines would, of course, not be mandatory. Rather, they would provide technical assistance to persons who must comply with paragraph (c).

Paragraph (c)(1) requires that the public and common use areas be readily accessible to and usable by handicapped persons. A common use area, as that term is defined in § 100.201, means interior and exterior rooms, spaces or elements of a building that are made available for the use of residents of a building or the guests thereof. This provision means that hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings and other common areas and facilities not contain barriers to entrance and use by persons with disabilities. House Report at 26. Public use areas include interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned. Paragraph (c)(1) further requires that one regular entrance to public and common use areas be accessible to persons with handicaps for the same purpose for which it is used by others. Thus, paragraph (c)(1) does not require that all entrances be made accessible to handicapped persons. Moreover, in a building without an elevator, only the public and common use areas on the "ground floor" of the building need be made accessible. At least one of each type of public and common use area available to residents of the building, however, must be accessible from the dwelling units on the ground floor.

Paragraph (C)(2) requires that all of the doors "designed to allow passage" into and within all covered premises be sufficiently wide to allow passage by handicapped persons in wheelchairs. This requirement does not apply to doorways not designed to allow passage, such as into a linen closet, but does apply to a walk-in closet since such a doorway is designed to allow passage. House Report at 26.

Paragraph (c)(3) requires that all premises within covered multifamily dwelling units contain four features of adaptive design.

Under paragraph (c)(3)(i), there must be an accessible route into and through the covered dwelling unit. An "accessible route" is defined in § 100.201 to mean a continuous unobstructed path

connecting accessible elements and spaces in a building that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities.

Under paragraph (c)(3)(ii) light switches, electrical outlets, thermostats and other environmental controls must be provided in accessible locations. That is, the controls must neither be too high or too low. This provision is not intended to increase the risk of danger to others or necessarily to require waist high controls. House Report at 26–27.

Under paragraph (c)(3)(iii), bathroom walls must be reinforced to allow later installation of grap bars around the toilet, tub, shower stall and shower seat, where such facilities are provided.

Under paragraph (c)(3)(iv), the kitchens and bathrooms in covered dwelling units must be "usable * * * such that an individual in a wheelchair can maneuver about the space." Paragraph (c)(3)(iv) would *not* require that fixtures, cabinetry or plumbing be adjustable. *Id.* 134 Cong. Rec. S10535 (daily ed. August 2, 1988) (statement of Sen. Harkin). The legislative history of this provision indicates that design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with handicaps without necessarily increasing the size of the space. House Report at 27. The provision requires that such space be usable by persons with handicaps, but does not require that a turning radius be provided "in every situation." *Id.* The Department will address this requirement in greater detail in accessibility guidelines to be published in the near future. These guidelines are expected to contain examples of kitchens and bathrooms that meet the "usability" requirement of paragraph (c)(3)(iv).

Paragraph (d) provides two examples that illustrate the application of paragraph (c).

Paragraph (e) states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3). Paragraph (e) implements section 804(f)(4) of the Fair Housing Act. This section does not require that designers and builders follow ANSI A117.1 exclusively. However, if designers and builders do follow ANSI A117.1 then they will have satisfied the requirements of paragraph (c)(3). House Report at 27.

A dwelling unit that complies fully with ANSI A.117.1 goes beyond what is required by the Fair Housing Act. For example, under ANSI A117.1 the kitchen cabinets either must be at the proper height for a person in a wheelchair or must be capable of being adjusted to the proper height. Ranges and cooktops must have controls which are accessible to a person in a wheelchair. All rooms and spaces must meet minimum space allowances which allow for wheelchair turning space. As previously explained, the language of the Fair Housing Act and its legislative history make it plain that the Act does not require these features of accessibility or adaptability.

Paragraphs (f) and (g) implement the provisions of the Fair Housing Amendments Act designed to encourage enforcement by the States and local governments of the provisions of the Act regarding adaptability and accessibility requirements for newly constructed multifamily dwellings. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Senators Kennedy and Specter Regarding Their Substitute Amendment).

Paragraph (f) states that compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) satisfies the requirements of paragraphs (a) and (c).

Paragraph (g)(1) explains that it is the policy of HUD to encourage States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c). HUD will provide technical assistance to States and localities, and to private individuals to assist them in interpreting the new construction requirements. The accessibility guidelines which the Department intends to propose in the near future will provide technical assistance.

Paragraph (g)(2) states that a State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

Paragraph (h) states that determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

Paragraph (i) states that subpart D does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart. Many states and localities have enacted accessibility and equal opportunity requirements for persons with disabilities. The Fair Housing Act establishes minimum standards for accessibility, and does not supplant or replace State or local laws which impose higher standards. House Report at 28.

Subpart E—Housing for Older Persons

Section 100.300 Purpose.

The Fair Housing Amendments Act exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibitions against discrimination because of familial status and the housing for older persons exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons. 134 Cong. Rec. S10465–66 (daily ed. August 1, 1988) (statement of Sen. Karnes). Section 100.300 explains that the purpose of subpart E is to effectuate the housing for older persons exemption in the Fair Housing Amendments Act.

Section 100.301 Housing for older persons exemption.

Section 100.301 provides the analytical framework for subpart E. Paragraph (a) implements the second sentence of section 807(b)(1) of the Fair Housing Act, as amended. It states that the prohibitions against discrimination because of familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302 (*"State and Federal Elderly Housing Programs"*), 100.303 (*"62 or Over Housing"*), or 100.304 (*"55 or Over Housing"*).

Paragraph (b) states that nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Paragraph (b) implements the first sentence section 807(b)(1) of the Fair Housing Act. Many jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit; HUD also enforces occupancy standards in its assisted housing programs. Reasonable limitations do not violate the Fair Housing Act as long as they apply equally to all occupants.

Section 100.302 State and Federal elderly housing programs.

Section 100.302 implements section 807(b)(2)(a) of the Fair Housing Act. Section 100.302 exempts housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to

assist elderly persons, as defined in the State or Federal program from the prohibitions against discrimination because of familial status in this part.

For example, section 202 of the Housing Act of 1959, 12 U.S.C. 1701 ("section 202"), provides Federal financial assistance to private sponsors who provide housing for elderly or handicapped persons. There are three distinct categories of eligible handicapped persons in the section 202 program, those who are physically handicapped; developmentally disabled; and chronically mentally ill. Thus, including elderly persons (age 62 or over) there are actually four separate groups of persons eligible for section 202 assistance, and each group has distinct needs. Accordingly, section 202 developments are custom-tailored to the specific client population or populations the sponsor was approved by HUD to serve. For instance, many section 202 projects are lawfully limited to elderly (62 years of age or older) and physically handicapped persons. It follows that persons who are not elderly or physically handicapped are not eligible for projects designed and approved for elderly and physically handicapped persons and cannot be admitted to them. Section 100.302 makes it clear that such a policy does not violate the Fair Housing Act because the housing is a Federal program specifically designed and operated to assist elderly persons. State programs determined by the Secretary to be specifically designed and operated to assist elderly persons are also exempt from the prohibitions against discrimination in this part.

Section 100.303 62 or over housing.

Section 807(f)(2)(B) exempts housing intended for, and solely occupied by, persons 62 years of age or older. If *all* of the persons occupying a housing facility are 62 or older, then that housing facility is exempt from the prohibitions against discrimination because of familial status in this part, regardless of what other features the housing may or may not have. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). *See also,* 134 Cong. Rec. S10466 (daily ed. August 1, 1988) (statement of Sen. Karnes) ("Elderly housing is . . . exempted . . . from the requirement to admit families with children if no one in the building is under 62 years of age . . .").

Paragraph (a)(1) contains a transition provision to ensure that the interests of current residents of housing that excludes children will not be unduly disturbed by the Fair Housing Amendments Act. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). It provides that housing satisfies the requirements of § 103.303 even though three persons residing in such housing on September 13, 1988 who are under 62 years of age, *provided that* all new occupants thereafter are persons 62 years of age or older.

Section 6(d) of the Fair Housing Amendments Act provides that housing shall not fail to meet the requirements for housing for older persons by reason of "persons residing in such housing *as of the date of enactment of this Act* [*i.e.,* September 13, 1988]" who do not meet the age requirements of the housing for older persons exemption, provided that all new occupants meet the age requirements of the housing for older persons exemption. Section 13(a) of the Fair Housing Amendments Act provides that "[t]his Act and the Amendments made by this Act shall take effect on the 180th day beginning after the date of enactment of this Act." The date described in section 13(a) of the Fair Housing Amendments Act is March 12, 1989. This presents a question as to whether the appropriate date for the transition provision in § 100.303(a)(1) is September 13, 1988 or March 12, 1989. If section 6(d) of the Fair Housing Amendments Act is applied literally then housing providers, in order to avail themselves of this transition provision, had to begin filling units in accordance with the age requirements of the housing for older persons exemption on September 13, 1988, which is before the effective date of the Act.

The proposed rule follows the plain meaning of section 6(d) of the Fair Housing Amendments Act. Thus, paragraph (a)(1) of §100.303 provides that housing satisfies the requirements of the housing for older persons exemption even though there were persons on September 13, 1988 who did not meet the age requirements, provided that new occupants after September 13, 1988 satisfy the applicable age requirements. The Department has proposed this date instead of the effective date in section 13(a) of the Fair Housing Amendments Act (March 12, 1989) because the Department believes that the general language in section 13(a) was not intended to render the more specific language in section 6(d) a nullity. Moreover, under this interpretation of the Act there is not inconsistency between sections 6(d) and 13(a) of the Fair Housing Act. The Act will take effect on March 12, 1989 and, by its terms, the housing for older persons exemption will be satisfied even though, on September 13, 1988, there were persons in the housing facility who did not meet the age requirements, provided that all new occupants concepts after September 13, 1988 meet the age requirements. The same date (September 13, 1988) is, for the same reasons, referenced in §100.304(d)(1) ("*55 or Over Housing*").

This interpretation of the Act may seem unduly restrictive because, since the date of enactment, some owners may have already filled vacant units in a manner which substantially restricts them from converting their property to housing for older persons within the meaning of the Act. Such an interpretation is driven by the statutory language. The transition provision in Section 805(b)(3) of the statute relating to persons residing in a housing facility who do not meet the age restrictions for housing for older persons is expressly limited to "persons residing in such housing as of the date of enactment of this Act." In view of the consequences of this interpretation of the Act, the Department invites public comment on this issue.

Paragraph (a)(2) states that housing satisfies the requirements of §100.303 even though there are occupied units (at any time), provided that such units are reserved for occupancy by persons 62 years of age or over.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). The purpose of the first example is to show that all persons occupying the housing in question must be 62 years of age or older. The presence of one person per unit 62 years of age or older is not sufficient to qualify a housing facility for this exemption to the prohibition of discrimination against families with children. However, a housing facility that does not qualify for the "62 or over" exemption in § 100.303 may nonetheless qualify for the "55 or over exemption" in § 100.304. The second example in paragraph (b) illustrates the application of paragraphs (a)(1) and (a)(2).

Section 100.304 55 or over housing.

Section 100.304 implements section 807(b)(2)(C) of the Fair Housing Act which exempts housing communities intended and operated for occupancy by at least one person 55 years of age or over per unit that satisfy certain criteria.

Paragraph (a) exempts from the prohibitions against discrimination because of familial status in this part housing intended and operated for occupancy by at least one person 55 years of age or older per unit *provided* the housing satisfies the requirements of

§ 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

Paragraph (b)(1) is satisfied if the housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them.

The physical environment of the housing facility is one factor the Department may consider in determining whether a housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. While residents of a housing facility for persons 55 years old or older may generally be of good health when they enter a development, they are likely to experience a diminution of physical capacity as the years pass. A physical environment designed to accommodate the changing needs of its residents might include hand rails along steps and interior hallways to reduce the risk of falls, reinforcement for grab bars in bathrooms, routes that allow the use of wheelchairs, canes and walkers, lever type doorknobs and single lever faucets. House Report at 32. All of these features need not be present for a housing facility to be considered as having been designed to accommodate the changing needs of its residents.

The list of significant facilities and services designed to meet the social needs of older persons in the proposed rule is drawn from section 202(f) of the Housing Act of 1959, 12 U.S.C. 1701q, listing examples of facilities and services for older persons. The House Report (at p. 32) relies heavily upon the listing in section 202(f) of the Housing Act of 1959 in its discussion of such facilities. The provision of significant facilities and services designed to meet the social needs of older persons may extend the period of independence of older persons and enhance the quality of their lives. House Report at 31–32.

The facilities and services designed to meet the physical and social needs of older persons must be "significant" in order to satisfy paragraph (b)(1). For example, the installation of a ramp at the front entrance of a housing facility would not constitute a "significant" facility designed to meet the physical needs of older persons. Similarly, the provision of minor amenities, such as putting a couch in a laundry room and labeling it a recreation center would not constitute a "significant" facility designed to meet the social needs of older persons. House Report at 32.

The listing of facilities and services in paragraph (b)(1) is not exclusive nor is a facility required to have all of the items listed.

A housing facility may qualify for the "55 or over" exemption even if it does not satisfy the requirements of paragraph (b)(1). Under paragraph (b)(2), a housing facility that does not provide significant facilities and services specifically designed to meet the physical or social needs of older persons may nonetheless qualify for the "55 or over" exemption. Such a housing facility must demonstrate that it is not practicable for it to provide significant facilities and services designed to meet the physical and social needs of older persons and also demonstrate that the housing facility is necessary to provide important housing opportunities for older persons.

The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons in the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility. For example, a housing facility satisfies paragraph (b)(2) if the housing facility can demonstrate that the cost of providing significant facilities and services designed to meet the physical or social needs of older persons would result in depriving low- and moderate-income persons of needed and desired housing. 134 Cong. Rec. S10549 (daily ed. August 2, 1988) (statement of Sen. Kennedy).

In order to qualify for the "55 or over" exemption a housing facility, in addition to satisfying the requirements of paragraph (b)(1) *or* (b)(2) must also satisfy the requirements of paragraph (c)(1) and (c)(2).

Paragraph (c)(1) requires that at least 80% of the units in the housing facility be occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with paragraph (c)(1) of this section until 25% of the units in the facility are occupied. The exception for partially occupied newly constructed housing facilities is designed to deal with the practical problem of filling units in a new and unoccupied housing facility in a reasonable manner, consistent with the "55 or over" exemption. For example, a large newly constructed housing facility that intends to qualify for the exemption should not lose its right to claim the exemption simply because the first unit happens to be filled with persons all of whom are under 55 years of age. However, once a reasonable percentage of units has been filled the housing facility can reasonably be expected to comply with the percentage requirement in paragraph (c)(1). The proposed rule would require a housing facility to comply with the 80% requirement in paragraph (c)(1) once 25% of the units in the housing facility have been filled. The Department invites comment on the question of whether the 25% point is too high or too low.

Under paragraph (c)(2), the owner or manager of a housing facility must also publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

Paragraph (d)(1) states that housing satisfies the requirements of this section even though on September 13, 1988,

under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are newly occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Paragraph (d)(1), like paragraph (a)(1) of § 100.303, is a transition provision to ensure that the interests of current residents of housing that excludes children will not be be unduly disturbed by the Fair Housing Amendments Act.

Under paragraph (d)(2), housing satisfies the requirements of $100.304 even though there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age of over.

Paragraph (e) contains three examples that illustrate the application of § 100.304.

Subpart F—Interference, Coercion or Intimidation

Section 100.400 Prohibited interference, coercion or intimidation.

The Fair Housing Amendments Act revises the statutory definition of discriminatory housing practices in the Fair Housing Act to include actions to intimidate, coerce or interfere with persons engaged in activities protected under the Fair Housing Act. Under Title VIII of the Civil Rights Act of 1968 such actions were violations of the law, but vindication of these rights could be obtained only through the initiation of a private civil action or through an action brought by the Attorney General in Federal district court.

The inclusion of interference, coercion and initimidation as discriminatory housing practices means that allegations that such conduct has occurred, or is about to occur because of race, color, religion, sex, handicap, familiar status, or national origin can be the subject of an administrative complaint under the Fair Housing Act. This subpart provides the interpretation of the Department as to the conduct which constitutes a discriminatory housing practice in this area.

Section 100.400(b) states that the Fair Housing Act makes it unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

The illustrations in this section indicate any type of activity can constitute a discriminatory housing practice. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or vandalism which limits a person's ability to have full enjoyment of a dwelling. Threatening or intimidating actions include acts against the possessions of persons such as damage to automobiles or other acts of vandalism which limit a person's ability to have full enjoyment of a dwelling. In addition, the protections against discrimination reach any person, including persons selling or renting dwellings and persons engaged in activities promoting fair housing. Further, persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in conduct to coerce, intimidate, threaten or interefere with persons in connection with protected activities or to retaliate against any person involved in any way in proceeding under the Fair Housing Act.

PART 103—FAIR HOUSING COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Section 103.1 Purpose and applicability.

Proposed Part 103 would contain the procedures established by the Department for the investigation and conciliation of complaints under section 810 of the Act, as amended by the 1988 Amendments. Part 105 would be retained to govern the investigation and conciliation of complaints under section 810 of the Act as it existed before the 1988 Amendments. (§§ 103.1 and 105.1)

Except for complaints that involve allegations of discriminatory housing practices that occur before and continue after the effective date of the 1988 Amendments (March 12, 1989), the proposed rule provides that:

—Complaints alleging discriminatory housing practices that occurred before the effective date of the 1988 Amendments would be governed by the procedures in Part 105.

—Complaints alleging discriminatory housing practices that occur on or after the effective date of the 1988 Amendments would be governed by the procedures in Part 103.

To the extent that complaints allege violations that occur before and continue after the effective date of the 1988 Amendments, complainants should be accorded the full range of remedies provided under the 1988 Amendments. (For example, an applicant for rental housing who was unlawfully excluded before the effective date of the Act may continue to be unlawfully excluded after the effective date.) Accordingly, § 103.1(b)(1)(i) provides that complaints filed after March 12, 1989 alleging such continuing discriminatory housing practices would be processed under Part 103. The proposed rule at § 105.81 would ensure that complainants who filed complaints before March 12, 1989 alleging such continuing discriminatory housing practices will have an opportunity to have their complaints processed under the new Part 103 procedures. While such complaints initially would be processed under Part 105, if during the investigation or conciliation of the complaint the Department determines that the complaint involves an alleged discriminatory housing practice that continues after March 12, 1989, the Department will provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103 in lieu of the Part 105 procedures. This notice would describe the procedures available to the complainant under each part. If the complainant makes the election, HUD would notify the respondent of the election and process the complaint under Part 103. (Also see §§ 103.1 and 105.1.)

This section would also include a provision requiring HUD to conduct investigations and conciliations in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A related amendment to existing Part 105 is also proposed.

Section 103.9 Definitions.

The proposed rule would adopt the definitions currently contained in Part 105 with the following major changes:

—The proposed definition of "discriminatory housing practice" would include acts that are unlawful under section 818 of the Act. Section 818 makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 804, 805 or 806 of the Act. Before the 1988 Amendments, this section could only be enforced by an appropriate civil action. This expanded definition of discriminatory housing practice would permit the enforcement of this section through complaints filed with HUD.

—"Complainant", as defined under the proposed rule, would implement sections 802(j) and 810(a)(1)(A)(i) of the Act by clarifying that any person,

including HUD, may file a complaint under Part 103.

—New definitions added to section 802 of the Act by the 1988 Amendments including "aggrieved person", "conciliation", "conciliation agreement" and "respondent" would be added and other miscellaneous definitions including "substantially equivalent State or local agency", "Attorney General", and "General Counsel" would be included for clarity.

Subpart B—Complaints

Subpart B of Part 103 would contain the procedures for the filing of complaints and answers. These procedures reflect the current requirements for the filing of complaints and answers described in Part 105 with the following major revisions:

Section 103.15 Who may file complaints.

As required by section 810(a)(1)(A)(i) of the Act, complainants may submit complaints not later than one year after an alleged discriminatory housing practice has occurred or terminated. This language is intended to reaffirm the concept of continuing violations, under which the statute of limitations is measured from the date of the last asserted occurrence of the unlawful practice. The one-year limitation represents an increase from the pre-1988 Amendment limitation of 180 days, but is less than the two-year period provided for civil cases. See H. R. Rep. No. 711, 100th Cong., 2d Sess. 33 (1988).

Section 103.45 Service of notice on aggrieved person.

Proposed § 103.45 implements section 810(a)(1)(B)(i) of the Act which requires the Secretary to serve notice upon the aggrieved person acknowledging the filing of a complaint and advising the person of the time limits and choice of forums provided under Title VIII. In accordance with this statutory requirement, the proposed rule would require the Assistant Secretary to notify each aggrieved person on whose behalf the complaint was filed. The notice would: (1) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing; (2) include a copy of the complaint; (3) advise the person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under Parts 103 and 104; (4) advise the aggrieved person of the right to commence a civil action under section 813 of the Act, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; and (5) advise the aggrieved person that retaliation against a person because he or she made a complaint, or testified, assisted, or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice prohibited under section 818 of the Fair Housing Act.

Section 103.50 Notification of respondent; joinder of additional or substitute respondents.

Section 810(a)(1)(B)(ii) of the Act requires the Secretary to serve a notice on the respondent within 10 days of the filing of the complaint (or within 10 days of the identification of a substitute or additional respondent). In accordance with these provisions, proposed § 103.50 would require the Assistant Secretary to serve a notice on the respondent. The notice would: (1) Identify the alleged discriminatory housing practice upon which the complaint is based and include a copy of the complaint; (2) state the date that the complaint was accepted for filing; (3) advise the respondent of the time limits applicable to complaint processing under Part 103 and of the procedural rights and obligations of the respondent under Parts 103 and 104, including the opportunity to submit an answer; (4) notify the respondent of the aggrieved person's right to commence a civil action under section 813 of the Act; (5) if the respondent was not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for HUD's belief that the joined person is properly joined (see section 810(a)(2) of the Act); and (6) advise the respondent that retaliation against a person because he or she made a complaint, or testified, assisted or participated in an investigation or conciliation under Part 103 or an administrative proceeding under Part 104, is a discriminatory housing practice under section 818 of the Fair Housing Act.

Section 103.55 Answer to complaint.

Under existing procedures, respondents are given only seven days to answer a complaint. Section 810(a)(1)(B)(iii) of the Act provides that each respondent may file an answer to the complaint not later than 10 days from the date of receipt of the notice. Proposed § 103.55 reflects this increased time period.

Subpart C—Referral of Complaints to State and Local Agencies

Section 103.100 Notification and referral to substantially equivalent State or local agencies.

Section 810(f)(1) of the Act provides: "whenever a complaint alleges a discriminatory housing practice—(A) Within the jurisdiction of a State or local public agency; and (B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer the complaint to that cetified agency before taking any action with respect to the complaint." Proposed § 103.100 would state the procedures for the notification and referral of complaints to substantially equivalent State and local agencies; and would provide for the notification of the aggrieved person and the respondent of the referral, including a notification of the right to file a civil action under section 813 of the Act.

Under § 103.9, HUD is permitted to file complaints alleging discriminatory housing practices. To ensure that HUD-initiated complaints will be investigated and conciliated by HUD, the memorandum of understanding executed by HUD and the substantially equivalent State or local agency will include the agency's consent to HUD's processing of the complaint.

Section 103.105 Cessation of action on referred complaints.

Proposed § 103.105 would address HUD's responsibilities regarding referred complaints. As required under section 810(f)(2) of the Act, after a complaint is referred, the Assistant Secretary shall not take any further action with respect to the complaint, except reactivation as described below. The proposed rule would provide, however, that the referral of the complaint to a substantially equivalent State or local agency would not prohibit the Assistant Secretary from taking appropriate actions under other civil rights authorities applicable to departmental programs.

Section 103.110 Reactivation of referred complaints.

In accordance with section 810(f)(2) of the Act, proposed § 103.110 would permit HUD to reactivate a complaint referred to a substantially equivalent State or local agency if:

—The substantially equivalent State or local agency consents to the reactivation.

—The Assistant Secretary determines that the agency no longer qualifies for recognition as a substantially

equivalent State or local agency and may not accept interim referrals with respect to the alleged discriminatory housing practice.

—The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that the agency received the notification and referral of the complaint, or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD would not reactivate a complaint under these conditions, however, until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in the processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, HUD may leave the complaint with the agency for a reasonable time.

Before the 1988 Amendments, section 810(d) of the Act permitted the reactivation of complaints where the Secretary certifies that "in his judgment, under the circumstance of the particular case, the protection of the rights of the parties or the interests of justice requires such actions." This statutory basis for reactivation of complaints was not retained in the new act. Accordingly, reactivation on this basis would not be permitted under Part 103.

The 1988 Amendments permit HUD to make referrals for up to 48 months following the date of enactment to agencies that are certified (including agencies that are certified for interim referrals under Part 115) on the day before enactment of the 1988 Amendments. It is unlikely that such agencies will immediately provide the full range of remedies accorded complainants under the 1988 Amendments. However, given the limited statutory authorization for reactivation provided under section 810(f)(2) of the Act, it does not appear that HUD has the authority to reactivate such complaints to provide the complainant with the full range of remedies available under the 1988 Amendments. However, where an agency consents, HUD may resume processing of a complaint.

Section 103.115 Notification upon reactivation.

Proposed § 103.115 would require the Assistant Secretary to notify the substantially equivalent of State or local agency, the aggrieved person and the respondent of the reactivation of a complaint. The notification would advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and respondent under Parts 103 and 104. The notification would also describe the aggrieved person's right to commence a civil action under section 813 of the Act.

Subpart D—Investigation Procedures

Section 103.200 Investigations.

Under § 103.200 of the proposed rule, investigations would be initiated upon the filing of a complaint (see section 810(a)(1)(B)(iv) of the Act). The purposes of such investigations would be to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint; to document the policies and practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint; and to develop factual data necessary for the General Counsel to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions under Part 103.

In addition to investigations initiated by complaints, the 1988 amendments permit HUD to initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B (see section 810(a)(1)(A)(iii) of the Act). The proposed rule would permit such investigations upon the written direction of the Assistant Secretary.

Section 103.205 Systemic processing.

Three specialized types of investigations are available under existing Part 105. These include: systemic processing, accelerated processing, and rapid response processing. Rapid response and accelerated processing were developed to enable HUD to expeditiously resolve certain types of recurring complaints without first conducting an extensive investigation. Since the 1988 Amendments permit HUD to begin conciliation upon the filing of a complaint without first completing an investigation, a specific reference to these two procedures in the regulation is not necessary. Provisions permitting systemic processing, however, would be retained.

Section 103.215 Conduct of investigations.

Proposed § 103.215 would continue HUD's existing practice of seeking the voluntary cooperation of persons to obtain access to information necessary to further the investigation. Additionally, this rule would implement section 811 of the Act which addresses the issuance of subpoenas and the conduct of discovery in aid of investigations. The proposed rule would state that the Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative hearing under Part 104, except that the Assistant Secretary would have the power to issue subpoenas as described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary would require the approval of the General Counsel before issuance.

Section 103.220 Cooperation of Federal, State and local agencies.

Proposed § 103.220 reflects provisions currently contained in Part 105 which permit the Assistant Secretary, in processing Fair Housing Act complaints, to seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. To ensure that other Federal agencies are aware of their responsibility under section 808(d) and (e) of the Act and under Executive Order No. 12259, the proposed rule would add that Federal agencies, including agencies having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations.

Section 103.225 Completion of investigation.

The Assistant Secretary is required to complete investigations within 100 days after the filing of the complaint (or, when the Assistant Secretary reactivates a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notification of reactivation), unless it is impracticable to do so. If the investigation cannot be completed within this time limit, HUD is required to notify the aggrieved person and the respondent of the reasons for the delay (see section 810(a)(1)(B)(iv) and (C) of the Act). These requirements are included in the proposed rule at § 103.225.

Section 103.230 Final investigative report.

Section 810(b)(5)(A) of the Act requires the Secretary to prepare a final investigative report at the end of the investigation. This section also includes specific requirements for the contents of the investigative report. These requirements are included in the proposed rule at § 103.230. Under the proposed rule, the report shall contain:

—The names and dates of contacts with witnesses. The proposed rule would provide for the nondisclosure of the names of witnesses that request anonymity, but notes that HUD may be required to disclose the names of such witnesses during the course of an administrative hearing under Part 104 or in a civil action under Title VIII.
—A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.
—A summary description of other pertinent records.
—A summary of witness statements.
—Answers to interrogatories.

The proposed rule, in accordance with section 810(d)(2) of the Act, would provide that the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

The 1988 Amendments provide for the continuation of conciliation procedures as a primary feature of fair housing enforcement. Thus, while HUD is investigating the complaint, HUD will also seek to resolve the complaint and issues raised during the investigation of the complaint through informal negotiations involving the aggrieved person, the complainant and the respondent (see definition of "conciliation" at § 103.9).

Section 103.300 Conciliation.

Proposed § 103.300 provides that the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint during the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the General Counsel. In conducting conciliation, HUD would attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices in the future.

Proposed § 103.300(c) would prohibit officers, employees, and agents of HUD engaged in the investigation of the complaint under Part 103 from participating or advising in the conciliation of the same complaint or in any factually related complaint. The purpose of this prohibition is to ensure that information gathered during the conciliation process is not used in the investigation of the complaint. HUD recognizes, however, that there may be circumstances where a dual role for the HUD employee may be necessary. Accordingly, § 103.300(c) states that the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation where the rights of the aggrieved person and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed. (These prohibitions are discussed below at § 103.330.)

Section 103.310 Conciliation agreement; Section 103.315 Relief sought for aggrieved persons; and Section 103.320 Provisions sought for the public interest.

If conciliation is successful, the terms of the settlement of a complaint would be reduced to a written conciliation agreement (see § 103.310 and definition of conciliation agreement at § 103.9). The agreement would seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought are described at §§ 103.315 and 103.320 and are the same as those permitted under existing Part 105, except that the proposed rule would also permit binding arbitration of the dispute arising under the complaint (see section 810(b)(3) of the Act).

Section 810(b)(2) of the Act provides that a conciliation agreement shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Secretary. The proposed rule at § 103.310(b) would incorporate these requirements. In addition, this rule would state that the Assistant Secretary will indicate HUD approval of the conciliation agreement by signing the agreement. The assistant Secretary would execute (as a complainant) or approve a conciliation agreement only if: The complainant and the respondent agree to the relief accorded the aggrieved person; the agreement will adequately vindicate the public interest; and, where the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest. Propsed § 103.310(b)(2) would preserve the General Counsel's ability to issue a charge under § 103.405, where the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

Section 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

Section 810(d) of the Act contains prohibitions and requirements with respect to the disclosure of information. Under this section, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under Title VIII without the written consent of the persons concerned. This section would be implemented at § 103.330 with the clarifying statement that information disclosed during conciliation would not be used in the investigation of the complaint.

Section 810(b)(4) recognizes an exception to the prohibition against disclosure of conciliation information. To encourage enforcement and compliance with the law, this section provides that conciliation agreements will be made public, unless the aggrieved person and the respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. This statutory provision is implemented at § 103.330(b). This proposed rule would also permit the publication of tabulated descriptions of the results of *all* conciliation efforts.

Section 103.335 Review of compliance with conciliation agreements.

Proposed § 103.335 would permit HUD to continue its current practice of monitoring and reviewing compliance with the terms of conciliation agreements, and would implement section 810(c) of the Act. Section 810(c) provides that whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814(b)(2) of the Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

While conciliation will continue to be a primary feature of fair housing enforcement, the 1988 Amendments provide for a new enforcement mechanism when conciliation fails. This

mechanism permits the Act to be enforced by HUD in an administrative proceeding under Part 104 or, if the complainant, the aggrieved person or the respondent elects, through a civil action commenced and maintained by the Attorney General under section 812(o) of the Act.

Section 103.400 Reasonable cause determination.

If a conciliation agreement has not been executed by the complainant and the respondent and approved by the Assistant Secretary, section 810(g)(1) of the Act requires HUD to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Under the proposed rule at § 103.400, the responsibility for this determination would be delegated to the General Counsel of HUD. As indicated in section 810(g)(1), this determination is to be based on the totality of the factual circumstances concerning the alleged discriminatory housing practice. Inasmuch as this determination will in the case of an election to proceed in Federal court under § 103.410 form the basis for the civil action, in making this determination the general Counsel would apply the same standard that is appropriate for a determination of when to proceed with a civil action of this kind in federal court.

This determination would be made within 100 days after the filing of the complaint (or where the Assistant Secretary has reactivated a complaint referred to a substantially equivalent State or local agency, within 100 days after service of the notice of reactivation), unless it is impracticable to do so. If the determination cannot be made within this time period, HUD would notify the aggrieved person and the respondent of the reasons for the delay (see section 810(g)(1) of the Act).

The proposed rule provides that the investigation would remain open until a reasonable cause determination is made (see § 103.225). This permits the General Counsel to request that the Assistant Secretary make a further investigation, where the investigative report is insufficient to determine whether reasonable cause exists. Where appropriate, the General Counsel may make direct inquiries to supplement the investigation.

If the General Counsel determines that reasonable cause exists, section 810(g)(2)(A) of the Act requires the immediate issuance of a charge on behalf of the aggrieved person. The charge forms the basis for further administrative proceedings or a civil action under section 812(o) of the Act. A charge would not, however, be issued if the matter involves the legality of a State or local zoning or other land use law or ordinance, since HUD is required to refer such matters to the Attorney General for appropriate action under section 814(b)(1) of the Act (see the proposed rule at § 103.400(a)(1)). Furthermore, section 810(g)(4) of the Act prohibits the issuance of a charge after the beginning of a trial in a civil action commenced by the aggrieved person under an Act of Congress or a State law, seeking relief with respect to the discriminatory housing practice (see proposed rule at § 103.400(b)).

If the General Counsel determines that no reasonable cause exists, section 810(g)(3) of the Act requires the dismissal of the complaint and public disclosure of the dismissal. The proposed rule at § 103.400(a)(2) would state that HUD shall notify the aggrieved person and the respondent of such a dismissal and shall make public disclosure of the dismissal. The Department notes that the dismissal of a complaint under this section would not preclude the filing of a new complaint based on newly discovered or previously unavailable information, provided the statutory one-year time limit for the filing of the complaint is met.

Section 103.405 Issuance of charge.

Section 810(g)(2)(B) of the Act provides that the charge: Shall consist of a short and plain statement of the facts upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; shall be based on the final investigative report; and need not be limited to the facts or grounds alleged in the complaint. This statutory language is reflected in § 103.405(a).

Within three days of the issuance of the charge, the General Counsel would: (1) Obtain a time and a place for an administrative hearing from the Chief Docket Clerk in the Office of Administrative Law Judges; (2) file and serve the charge along with notifications concerning the rights of the complaint; the respondent, and the aggrieved person to elect to have the claims asserted in the charge decided in an administrative hearing or civil action (the contents of the notification and requirements for service of the charge are more fully described below); and (3) notify the Assisant Secretary of the filing of the charge (see proposed § 103.405(b)).

Section 103.410 Election of administrative hearing or civil action.

The claims asserted in the charge will be decided either in a civil action under section 812(o) of the Act or in an administrative proceeding under Part 104. In accordance with section 812(a) of the Act, proposed § 103.410 provides that upon the issuance of a charge, the complainant (including the General Counsel, if HUD filed the complaint), the respondent, or the aggrieved person on whose behalf the complaint was filed may elect the civil action. If none of the parties elects the civil action, the General Counsel would maintain an administrative proceeding under Part 104 based on the charge. If an election is made, the General Counsel would promptly notify and authorize the Attorney General to commence and maintain a civil action under section 812(o) of the Act on behalf of the aggrieved person in an appropriate United States District Court. The notification and authorization would include the transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in HUD's Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification shall be filed and served in accordance with the procedures established under Part 104.

The General Counsel would be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart G—Other Actions by the Department

Section 103.500 Prompt judicial action.

Proposed § 103.500 would implement section 810(e) of the Act. If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of Part 103 or 104, the General Counsel would request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending the final disposition of the complaint. Before making the determination to request

such action the proposed rule also requires the General Counsel to consult with the Assistant Attorney General for the Civil Rights Division. Inasmuch as under section 810(e) of the Act it is incumbent upon the Attorney General to promptly commence an action upon receipt of such a request and in view of the Assistant Attorney General's prior experience in seeking such relief in different factual situations and before different forums, such prior consultation is appropriate and desirable. The commencement of the civil action would not affect the initiation or administrative proceedings under Part 103 or 104.

Paragraph (b) of this proposed rule would require the General Counsel to transmit information to the Attorney General and to State and local governmental licensing or supervisory authorities, as appropriate, whenever the General Counsel has a reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Act (Pattern or Practice Cases), proceedings under section 814(c) of the Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authority.

Section 103.510 Other action by HUD.

Proposed § 103.510 would address other actions that HUD may take with respect to matters asserted in a complaint. These would include: (1) The referral of matters to the Attorney General for appropriate action (e.g., enforcement of criminal penalties, under section 811(c) of the Act); the initiation of debarment proceedings or other action leading to the imposition of administrative sanctions; the initiation of proceedings under other civil rights authorities; or the provision of information to other Federal agencies with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

Part 104 would contain the rules of practice and procedure for administrative proceedings before an administrative law judge (ALJ) adjudicating the claims asserted in a charge issued under Part 103.

Subpart A—General Information

Subpart A would contain general information concerning administrative proceedings before an ALJ. This subpart would include provisions addressing: The scope of the rules (§ 104.10(a)); the requirement that hearings under the rules should be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record (see section 812(d)(2) of the Act) (§ 104.10(b)); a statement that the Department would reasonably accommodate persons with disabilities who are participants in the hearing or interested members of the public (§ 104.10(c)); the definitions used in the part (§ 104.20); the computation of time periods (including provisions permitting the ALJ to modify any time period, except for time periods required by statute) (§ 104.30); and the service and filing of documents by the parties and by the ALJ (§ 104.40).

Subpart B—Administrative Law Judge

Subpart B would prescribe provisions governing the designation of the presiding administrative law judge and the powers of the ALJ. As required by section 812(b) of the Act, the conduct of administrative proceedings under Part 104 is delegated to an ALJ appointed under 5 U.S.C. 3105. The presiding ALJ in a proceeding would be appointed by HUD's Chief ALJ (see proposed § 104.100).

This subpart would also: Prescribe the powers of the ALJ in the administrative hearing (§ 104.110); contain provisions for the disqualification of the ALJ (§ 104.120); prohibit ex parte communications (§ 104.130); and provide for the separation of all investigative, conciliatory and prosecutorial functions from the decision-making function of the ALJ (§ 104.140).

Subpart C—Parties

Subpart C would describe the parties to the proceeding. The parties would include: HUD, the respondent named in the charge and against whom relief is sought, and any intervenors. In accordance with section 812(c) of the Act, the proposed rule would permit the intervention by any aggrieved person. No other intervention is permitted in the proceedings, although briefs of amicus curiae may be permitted at the discretion of the ALJ (§ 104.200 (a) and (c)).

The rights of the parties to the proceeding are addressed in section 812(c) of the Act and would be implemented at § 104.200(b). These include the right to appear in person, to be represented by counsel, to examine and crossexamine witnesses, to introduce documentary or other relevant evidence into the record, and to request the issuance of subpoenas. The representation of the parties (including notice of appearance and withdrawal of representation) is described at proposed § 104.210. Standards of conduct for parties and their representatives are addressed at proposed § 104.220.

Subpart D—Pleadings and motions

Provisions governing pleadings and motions in an administrative proceeding are included at Subpart D. The requirements for the filing, service and contents of the charge are found at § 104.410. This rule would require filing with the Chief Docket Clerk in the Office of the Administrative Law Judges, and service upon the respondent and the aggrieved person on whose behalf the complaint was filed. The charge would consist of a short and plain statement of the facts upon which the General Counsel has reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The charge would be served with a notice of the rights of the complainant, the respondent and the aggrieved person on whose behalf the complaint was filed, to elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative hearing under Part 104. The notice would also state that if an administrative proceeding under Part 104 is elected: The parties would have an opportunity for a hearing at a date and place specified in the notice; the respondent would have a right to submit an answer to the charge within 30 days of the service of the charge; the aggrieved person may intervene as a party within 30 days of the service of the charge; and all discovery must be concluded 15 days before the date set for hearing.

Proposed § 104.420 would govern the contents and the submission of the respondent's answer to the charge. This rule would require the submission of an answer if the respondent contests material facts alleged in a charge or contends that the respondent is entitled to judgment as a matter of law. Answers would be required to include: A statement that the respondent admits, denys or does not have sufficient information to admit or deny, each allegation made in the charge; and a statement of each affirmative defense (and a statement of facts in support of each affirmative defense) claimed by the respondent.

This subpart also would contain: Provisions governing requests for intervention (§ 104.430); amendments and supplemental pleadings (§ 104.440); motions (§ 104.450); and general requirements for the form, signature and timely filing of all pleadings, motions, briefs and other documents. (§ 104.400).

Subpart E—Discovery

Section 811(a) of the Act states, in part, that the Secretary may order discovery in aid of administrative hearings under Title VIII. In accordance with this statutory authority, discovery procedures are included in Subpart E of the proposed rule. Consistent with section 812(d) of the Act, the procedures were designed to permit the parties to conduct discovery as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence (see § 104.500(b)). Except for the time periods stated in the rule, to the extent that the rules prescribed in Subpart E conflict with discovery procedures in aid of civil actions in the United States District Court for the district in which the investigation took place, § 104.500 would provide that the rules of the District Court apply.

Specific discovery methods would include: Deposition upon oral examination and written interrogatories (§§ 104.510 and 104.520); written interrogatories (§ 104.530); requests for the production of documents or other evidence, entry upon land for inspection and other purposes, and physical and mental examinations (§ 104.540); and requests for admissions (§ 104.550). The frequency and sequence of these methods is not limited, except that discovery must be completed 15 days before the date scheduled for the hearing (§ 104.500 (d) and (e)). The proposed rule would also include provisions governing the supplementation of responses (§ 104.560); the issuance of protective orders (§ 104.570); and motions to compel discovery and the imposition of sanctions (§ 104.580).

Subpart F—Subpoenas

In accordance with the authorization contained in section 811(a) of the Act, Subpart F would provide for the issuance of subpoenas in aid of administrative hearings. Consistent with this statutory authority, the subpart would provide that the rules of the United States District Court for the district in which the investigation of the discriminatory housing practice took place would apply to the extent that Subpart F conflicts with procedures for the issuance of subpoenas in civil actions in that district court (except for time periods stated in the rules).

Under proposed § 104.590, the Chief ALJ or the presiding ALJ would be permitted to issue subpoenas upon the written request of a party. The subpoena could require: The attendance of a witness for the purpose of giving testimony at a deposition; the attendance of a witness for the purpose of giving testimony at a hearing; or the production of relevant books, papers, documents, or tangible things. As required by section 811(b) of the Act, witnesses summoned by subpoenas issued under Part 104 would be entitled to the same witness and mileage fees as witnesses in proceedings in United States District Courts. Witness and mileage fees would be paid by the party requesting the subpoena or, where the party is unable to pay the fees, by HUD. Proposed § 104.590 would also address the time of the request for issuance of subpoena; the service of subpoenas; motions to quash or limit subpoenas; and referral to the Attorney General for enforcement under section 814(c) of the Act where a person fails to comply with a subpoena.

Subpart G—Prehearing procedures

Subpart G would permit the ALJ to direct the parties to file prehearing statements (§ 104.600) and to participate in prehearing conferences (§ 104.610). These proposed procedures are designed to aid in the clarification of the issues and facts in dispute and to promote the orderly and expeditious disposition of the proceeding.

Subpart G would also provide for settlement negotiations before a settlement judge. The ALJ conducting the settlement negotiations would be appointed by the Chief ALJ and would not be the ALJ presiding at the hearing.

Subpart H—Hearing Procedures

Procedures for the conduct of the hearing are described at Subpart H. Under this subpart:

—The hearing would be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur (see section 812(b) of the Act). This requirement is included in the proposed rule at § 104.700(b).

—The hearing would commence not later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g) of the Act). This requirement is included in the proposed rule at § 104.700(a).

—The hearing would be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–59) (§ 104.710).

—The Federal Rules of Evidence would apply to the presentation of evidence at the hearing, as required by section 812(c) of the Act (§ 104.730).

—The parties may waive the right to an oral hearing and present the matter for decision on a written record (§ 104.720).

—The ALJ may hear oral arguments following the submission of all evidence at the oral hearing and may permit the submission of written briefs (§ 104.790).

Part H would also include provisions governing: Notification and change of time and place of hearing (§ 104.700(c)); the issuance of in camera and protective orders (§ 104.740); the submission, identification and exchange of exhibits (§ 104.750); the authenticity of documents (§ 104.760); stipulations of the parties (§ 104.770); the record of the hearing (§ 104.780); the end of the hearing (§ 104.800); and the receipt of evidence following the end of the hearing (§ 104.810).

Subpart I—Dismissals and Decisions

Section 104.900 Dismissal.

Under § 104.900 of the proposed rule, the ALJ would be required to dismiss the proceeding: (1) Where the complainant, the respondent, or the aggrieved person on whose behalf the complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act; or (2) where an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the discriminatory housing practice and the trial of the civil action has commenced.

Section 104.910 Initial decision of administrative law judge.

Proposed § 104.910 describes the initial decision of the ALJ. Under this proposed rule, the ALJ would be required to issue an initial decision containing findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The decision must be issued within 60 days after the end of the hearing, unless it is impracticable to do so. If the ALJ is unable to issue the decision within this time period (or within a succeeding 60-day period), the ALJ would be required to notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay (see section 812(g)(2) of the Act).

Proposed § 104.910(b) would require the ALJ to issue an initial decision against the respondent and to order appropriate relief, if the ALJ determines that the respondent has engaged, or is about to engage in a discriminatory

housing practice. Relief that may be ordered includes:

—Damages to the aggrieved person (including damages caused by humiliation or embarassment).

—Injunctive or such other equitable relief as may be appropriate. No such relief, however, may affect any contract, sale, encumbrance, or lease consummated before the issuance of the initial decision that involves a bona fide purchaser, encumbrancer, or tenant without actual knowledge of the charge (see sections 810(g) (3) and (4) of the Act)).

—Civil penalties subject to ceilings of $10,000 to $50,000. The ceiling on the civil penaly will depend on the number of previous discriminatory housing practices the respondent has been adjudged to have committed within designated time periods in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency. In determining the number of previous adjudications, the ALJ would consider adjudications that occurred before the effective date of the Act. Determinations to resolve issued under § 105.55 would not be included as an adjudication of a previous discriminatory housing practice. If the ALJ determines that more than one respondent has been engaged or is about to engage in a discriminatory housing practice, the ALJ would be permitted to assess the civil penalty, up to the maximum permitted under the rule, against each respondent. (See section 812(g)(3) of the Act.)

Proposed § 104.910(c) would provide that the ALJ will make an initial decision dismissing the charge if the ALJ finds that the respondent has not engaged and is not about to engage in a discriminatory housing practice (see section 812(g)(7) of the Act).

Section 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the ALJ would be required to serve the decision on the respondent, the aggrieved person on whose behalf the charge was filed any intervenors, the General Counsel, and the Secretary of HUD. The initial decision would state that it will become the final decision of the Department unless the Secretary issues a final decision within 30 days (see § 104.920).

Section 104.925 Resolution of the charge.

Section 812(e) of the Act provides that any resolution of the charge before the issuance of a final decision by the Secretary requires the consent of the aggrieved person on whose behalf the charge is filed. Proposed § 104.925 would permit the parties to submit an agreement resolving the charge at any time before the issuance of the final decision. The agreement must be signed by the respondent, all aggrieved persons on whose behalf the charge was issued, and the General Counsel. The ALJ would accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge would waive any right to challenge or contest the validity of a decision based on the agreement.

Section 104.930 Final decision.

In accrodance with section 812(h) of the Act, proposed § 104.930 would permit the Secretary to review findings of fact, conclusions of law, or orders contained in the ALJ's initial decision, and issue a final decision. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings, Such a final decision would be served on the respondent, the aggrieved person on whose behalf the charge was filed, intervenors, and the General Counsel no later than 30 days from the date of issuance of the initial decision. If no final decision is issued by the Secretary within this time period, the initial decision of the ALJ would become the final decision of the Department. Such a final decision would be considered to have been issued 30 days following the date of issuance of the initial decision.

Under section 812(g)(7), HUD is required to make public disclosure of orders dismissing charges based on findings that the respondent has not engaged and is not about to engage in a discriminatory housing practice. The proposed rule at § 104.930 provides that HUD would make public disclosure of all final decisions, including those based on finding in favor of or against a respondent.

Section 104.935 Action upon issuance of a final decision.

Where a final decision includes a finding that the respondent engaged or is about to engage in a discriminatory housing practice in the course of a business subject to licensing or regulation by a Federal, State or local governmental agency, section 812(g)(5) requires HUD within specified time limits, to send copies of the findings of fact, conclusions of law, and decision to the governmental entity, and to recommend appropriate disciplinary action (including the suspension or revocation of the license of the respondent). This statutory requirement is implemented at § 104.935(a) of the proposed rule.

Where a final decision includes a finding that a respondent is engaged or about to engage in a discriminatory housing practice and another final decision including such a finding was issued under Part 104 within five years preceding the date of the issuance of the final decision, section 812(g)(6) requires HUD to send the Attorney General copies of the decisions. This requirement is contained in § 104.935(b).

Section 104.940 Attorney's fees and costs.

Section 812(p) of the Act provides that the ALJ may allow the prevailing party, other than HUD, reasonable attorney's fees and costs, and that HUD shall be liable for such fees and costs to the extent provided in 5 U.S.C. 504 (Equal Access to Justice Act). Section 802(o) provides that prevailing party has the same meaning as this term has under 42 U.S.C. 1988 (Civil Rights Attorney's Fees Awards Act).

Proposed § 104.940 would provide that any prevailing party, except HUD, may apply to the ALJ for attorney's fees and costs following the issuance of the final decision under § 104.940. The initial decision on fees and costs would become the final decision of HUD unless the Secretary reviews the decision and issues a final decision within 30 days.

The recovery of fees and costs would be permitted as follows:

If the respondent is the prevailing party, HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act and HUD's regulations at 24 CFR Part 14; and intervenors shall be liable for reasonable attorney's fees and costs to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees and costs unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

Judicial review of the final decision is addressed in § 104.950. This proposed rule is based on section 812(i) and (1) of the Act and would provide that:

—Any party adversely affected by a final decision under § 104.930 may file a

petition for review of the decision in the appropriate United States Court of Appeals within 30 days of the date of issuance of the final decision.

—If no such petition for review is filed within 45 days of the date of issuance of the final decision, the findings of fact and final decision would be conclusive in connection with any petition for enforcement filed thereafter.

Enforcement of the final decision would be addressed in § 104.955. Under this rule, HUD may petition the appropriate United States Court of Appeals for enforcement of the final decision and for appropriate temporary relief or restraining orders under section 812(j) of the Act at any time following the issuance of the final decision. Any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for enforcement under section 812(m) of the Act if before the expiration of 60 days from the date of issuance of the final decision, no petition for judicial review of the final decision has been filed and the General Counsel has not sought enforcement of the final decision.

Section 812 of the Act contains references to judicial proceedings involving the ALJ's initial decision and to judicial proceedings involving the final decision of the Secretary. For example, section 812(i) of the Act provides for judicial review of the "final order for relief under this section"; section 812(j) of the Act provides for the enforcement by HUD of "the order of the administrative law judge"; section 812(1) of the act describes the effect of the "administrative law judge's findings of fact and order" where a petition for review under section 812(i) of the Act has not been filed; and section 812(m) of the Act describes the enforcement of "the administrative law judge's order" by parties other than HUD. The provisions for Secretarial review of the initial decision of the administrative law judge were added as an amendment on the floor of the House of Representatives and were clearly intended to provide for review and enforcement of the final rather than the initial HUD decision. (E.g., 134 Cong. Rec. H4676–77 (daily edition June 23, 1988) (remarks of Rep. Fish). Accordingly, HUD has interpreted the statutory references to the administrative law judge's order to be references to the final decision of the Department.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

Part 106 was adopted in 1972 to establish procedures for the scheduling of public meetings or conferences to gather information to assist the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for Fair Housing and Equal Opportunity) in achieving the aims and objectives of title VIII of the Civil Rights Act of 1968 for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, or national origin. Part 106 was amended in 1975 to add "sex" as a basis of equal opportunity in housing.

The Department proposes to revise the heading of 24 CFR Part 106 and §§ 106.1, 106.2(b) and 106.2(c) to reflect the new short title of Title VIII of the Civil Rights Act of 1968, now known as the Fair Housing Act. "Handicap" and "familial status" would be inserted in § 106.1 as additional protected classes, and appropriate editorial modifications would be made for clarification purposes and for consistency in terminology.

PART 109—FAIR HOUSING ADVERTISING

The Fair Housing Advertising Regulations (Part 109) would be revised to reflect the expansion of the classes of persons protected under the Fair Housing Act from discriminatory advertising.

General

The purpose of the HUD Fair Housing Advertising Regulations is to assist all advertising media, advertising agencies and advertisers in complying with the requirements of the Fair Housing Act with respect to advertisements for the sale, rental or financing of housing. These regulations also describe the matters which the Department will consider in evaluating compliance with the Fair Housing Act in connection with the investigation of complaints alleging discrimination in advertising.

Section 804(c) of the Fair Housing Act has been amended to expand the prohibitions on discrimination in advertising for the sale or rental of a dwelling. The amendment added "handicap" and "familial status" to the existing prohibitions of discrimination on the basis of race, color, religion, sex, or national origin.

The Department is proposing to revise the Fair Housing Advertising Regulations to reflect the expanded coverage of the Fair Housing Act with respect to discrimination in advertising. Following is a section-by-section description of the proposed changes.

Section 109.5 Policy.

This section describes the statutory provisions on which the Fair Housing Advertising Regulations are based. The two new protected coverages of the amended statute—"handicap" and "familial status"—would be added in two places to the existing list of bases on which discrimination is prohibited. In addition, a reference to appraisal services would be inserted in the list of discriminatory practices specifically made unlawful under the Fair Housing Act. Because of the exemption in section 807(b) of the Fair Housing Act for "housing for older persons", it is also proposed to add a sentence to § 109.5 to explain that the prohibitions of the act regarding familial status do not apply with respect to such housing.

In addition, references to Title VIII of the Civil Rights Act of 1968 would be changed to the new short title of the statute, the "Fair Housing Act", both in this section and throughout the regulations.

Section 109.10 Purpose.

The Department is proposing only editorial changes to this section.

Section 109.15 Definitions.

This section contains definitions of the major terms used in Part 109. The Department proposes to add definitions of the terms "handicap" and "familial status" in paragraph (g) and (h), respectively. These new definitions are the same as the definitions contained in the Fair Housing Act. In addition, the definition of "Secretary" would be eliminated since the term is not used in the regulations, and the definitions of "person" and "discriminatory housing practice" would be revised to reflect statutory changes.

Section 109.16 Scope.

This section explains the use of the criteria contained in Part 109 by the Assistant Secretary with regard to action on complaints alleging discriminatory advertising with respect to advertising media and persons placing advertisements. The Department has proposed changes in the introductory language of paragraph (a) and in the language of paragraphs (a)(1) and (a)(2) to reflect the changes in complaint processing brought about by the Fair Housing Act amendments. Under the new procedure, the Assistant Secretary will make determinations as to whether there is reasonable cause to

believe that a discriminatory housing practice (or a violation of section 804 of the Fair Housing Act) has occurred or is about to occur.

Section 109.20 Use of words, phrases, symbols, and visual aids.

This section discusses how certain words, phrases, symbols and forms have been used in residential real estate advertising to convey either overt or tacit discriminatory intent.

In the undesignated introductory paragraph, it is proposed that the Assistant Secretary will consider whether, in a particular case, there is a need for "further proceedings on" the complaint, rather than a need for "seeking resolution of" the complaint. This change would reflect the new complaint processing procedures under the amended act.

In paragraph (a), which provides examples of words descriptive of dwelling, landlord, and tenants which should not be used in advertising, the Department proposes to add the phrase "adult building".

In paragraph (b), which lists examples of words indicative of persons in the protected groups covered by the Fair Housing Act, the Department proposes to add specific provisions on words relating to handicap and familial status. In proposed paragraph (b)(6), the rule would provide that nothing in the part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings. In proposed paragraph (b)(7), concerning familial status, the Department would include a statement making it clear that nothing in Part 109 would restrict advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in section 807(b) of the Fair Housing Act.

In paragraphs (c) and (d), the words "handicap" and "familial status" would be added to the list of protected groups.

Section 109.25 Selective use of advertising media or content.

This section indicates examples of how the selective use of advertising media or content can be used exclusively with respect to particular housing developments or sites, with discriminatory results.

In paragraph (c), which concerns selective use of human models when conducting an advertising campaign, the Department is proposing changes in the last two sentences of the paragraph to provide an example of selective advertising with respect to familial status.

Section 109.30 Fair housing policy and practices.

This section discusses actions that advertisers can take which would be considered as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

The Department proposes to add the words "handicap" and "familial status" where appropriate in paragraphs (a) and (b). In addition, the Department proposes to add language in paragraph (c), concerning use of human models, to indicate that models used in display advertising should represent families with children, when appropriate, as well as both majority and minority groups in the metropolitan area and both sexes.

Appendix to Part 109

The appendix to Part 109 contains three tables intended to serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising. The Department proposes to add the words "handicap" and "familial status" where appropriate in the three tables.

PART 110—FAIR HOUSING POSTER

Part 110 sets forth the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Civil Rights Act of 1968, 42 U.S.C. 3604–3606.

The Department proposes to amend Part 110 to comply with the requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, approved September 13, 1988). The major changes are in § 110.25, Description of Posters. The proposal would change the legend of the poster to add "handicap" and "familial status" to the bases of illegal discriminatory acts. The legend would also be revised to show that discrimination in the appraising of housing is illegal. In addition to the above amendments, editorial modification would be made for clarification purposes and for consistency in terminology.

PART 115—RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT LAWS

On August 9, 1984 the Department published 24 CFR Part 115 as a final rule (49 FR 32042) with an effective date of October 8, 1984. Part 115 sets forth the procedures and criteria used to determine whether a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in Title VIII of the Civil Rights Act of 1968. The Department proposes to revise Part 115 to comply with the requirements of the Fair Housing Act (the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, enacted September 13, 1988). The principal changes proposed would: (1) Provide for than a recognition process as provided in the current Part 115; (2) define the requirements for certification with the specificity required by the Act; (3) define the effect of the Act on agencies recognized as substantially equivalent under current Part 115; (4) require that in order to become certified agencies must provide protection against discrimination based on "handicap" and "familial status"; and (5) provide a prohibition against coercion, intimidation and threats.

To obtain certification, State and local agencies must administer laws which prohibit all discriminatory housing practices which are prohibited by the Act and must include as protected classes all classes protected by the Act. Discrimination on the basis of handicap is described in the statutory language and only those provisions of section 804(f) of the Act which clearly do not apply to State or local agencies may be omitted from the law or ordinance the agency administers if certification is to be granted. Further the remedies available to a certified agency must be substantially equivalent to the remedies available under the Act. Final agency actions must be subject to judicial review and aggrieved persons must have the right of access to a State or local court. The Act also requires that the procedures followed by a certified agency be shown to be substantially equivalent to those created by the Act. Such procedures as: Filing of complaints by the agency; acknowledgment of receipt of complaints and notice of procedural rights and obligations, completion of investigation and investigative report within 100 days and notice of cause for delay; provision for conciliation and a conciliation agreement which shall be made public under certain conditions; are examples of procedural matters which must be included in the law or ordinance administered by a certified agency.

The regulations require that the law or ordinance provide for resolution of a complaint by a body empowered to grant relief substantially equivalent to the relief which mat be granted by the Secretary under the Act.

The following revisions to Part 115 are proposed:

Section 115.1 Purpose.

Paragraph (a) is amended to permit the Secretary to take further action with regard to a complaint referred to a certified agency when the agency has consented; or the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral; or having commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or when the Secretary has determined that the agency no longer qualifies for certification with respect to the relevant jurisdiction. It is further amended to remove the provision permitting the Secretary to take further action with regard to a referred complaint on certification that the protection of the rights of the parties or the interests of justice require such action. This reflects the removal of comparable language from the statute.

Only technical changes are required in paragraph (b) to accommodate the change from "recognition" to "certification."

Section 115.2 Basis of determination.

The Fair Housing Amendments Act of 1988, section 810(f)(3)(A), makes it clear that the Secretary may certify a State or local agency for the purpose of referral of complaints of housing discrimination "* * * only if the Secretary determines that: (i) The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made; (ii) the procedures followed by such agency; (iii) the remedies available to such agency; and (iv) the availability of judicial review of such agency's action are substantially equivalent to those created by and under this title." The language of Title VIII, before the Fair Housing Amendments Act of 1988, required only that a State or local law provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in Title VIII.

As revised the section retains the current two-phase determination process for recognition. Paragraph (a) requires a determination that the law administered by the agency, on its face, provides that: (1) The substantive rights protected by the agency; and (2) the procedures followed by the agency; (3) the remedies available to the agency; and (4) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under the Act.

Paragraph (b) requires a determination that the current practices and past performance of the agency demonstrate that in operation the law in fact porvides rights and remedies which are substantially equivalent to those provided in the Act.

Section 115.3 Criteria for adequacy of law.

This section is retained in substantial part. However, extensive revisions are proposed.

Paragraph (a)(1) is expanded to show that the law or ordinance of a certified agency must provide that (1) complaints must be in writing, (2) the agency must serve notice on complainant acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided, (3) the agency promptly serve notice of the filing of a complaint on the respondent or person charged advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint, and (4) that a respondent may file an answer.

Paragraph (a)(2) is expanded to show that a certified agency must, as adjunct to its authority to investigate complaints, have subpoena power. The subsection codifies the longtime practice of the Department to require that, with few exceptions, a certified agency have subpoena power. Title VIII of the Civil Rights Act granted the Department subpoena power and the Department found it an effective and necessary adjunct in the investigative process. When the department had no authority beyond conciliation, it was thought that an agency that could grant relief might have more power to assure the cooperation of respondents than did HUD. Since the Act empowers HUD to grant relief this reasoning is no longer suasive and the exception to the requirement of subpoena power no longer valid.

Paragraph (a)(2) is further expanded to show that a certified agency must administer a law or ordinance which requires that: (1) The agency commence proceedings with respect to a complaint within thirty days of receipt of the complaint; (2) the agency investigate the complaint and complete its investigation within 100 days of receipt of the complaint; (3) the agency notify the complainant and respondent in writing if it is unable to complete the investigation within the 100 day period; (4) the agency make final administrative disposition of a complaint within one year of date of receipt of a complaint, unless it is impractical to do so, and notify the complainant and respondent in writing of the reasons for not doing so.

Although the one year time limitation within which the agency must make final administrative disposition of a complaint is not verbatim from the Act the requirement is consonant with the provisions of the Act. The Act (section 810(g) requires that the Secretary, within 100 days after the filing of a complaint, make a reasonable cause determination and when appropriate, issue a charge. Section 812 provides for a hearing before an administrative law judge to commence no later than 120 days following the issuance of the charge; the administrative law judge to make findings of fact and conclusions of law within 60 days after the hearing. The Secretary has 30 days thereafter to review the administrative law judge's findings. This completes the administrative disposition of the complaint. The approximate time allotted by the Act from date of receipt of complaint to final disposition is 310 days. The requirement that a certified agency make final disposition of a complaint within one year from date of receipt of a complaint, unless it is impractical to do so, is reasonable and within the time limitations prescribed in the Act. Paragraph (a)(2) also requires that a criterion for certification be the power to conciliate and that conciliation agreements must, under certain conditions, be made public as does the Act.

Paragraph (a)(3) is retained and examples of improper burdens on complainant are given: (1) A provision that a complaint must be filed within less than 180 days after the alleged discriminatory housing act (The Act provides one year to file a complaint. No complaint would be referred if filed with HUD within the one year period provided in the Act but after a lesser time for filing required by a certified agency.); (2) anti-testing provisions (courts have held that testing is a protected activity under Title VIII; (3) provisions that could subject a complainant to costs, criminal penalties or fees in connection with the filing of complaints, since they would have a chilling effect on prospective complainants.

Paragraph (a)(4) is retained verbatim.

Paragraph (a)(5) is expanded to include "familial status" to reflect the statutory change.

Paragraph (a)(5) is further expanded by substituting the term "discrimination in residential real estate related transactions" for the term discrimination in financing and the prohibition of such practices is practically verbatim from

the Act. A new subsection is added describing certain coercion, intimidation, threats or interference as acts which must be prohibited by the law administered by a certified agency.

The proviso to paragraph (a)(5) which permitted recognition even if the law did not contain adequate prohibitions with respect to blockbusting, discrimination in financing and access to or membership in brokers' organizations, has been removed. A certified agency should be able to process these types of complaints as well as other paragraph (a)(5) complaints. These rights created by Title VIII in 1968 should by now be fully protected by any certified agency.

Paragraph (b) is a substitute section and requires that the law administered by a certified agency grant that agency authority to: (1) Seek prompt judicial relief pending final disposition of a complaint; (2) issue subpoenas; (3) grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person; (4) grant injunctive or other equitable relief; and (5) assess a civil penalty against the respondent or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent. The Act grants this authority to the Secretary and a substantially equivalent agency must include this authority in its arsenal of remedies to combat housing discrimination effectively.

Paragraph (b) provides that actions by certified agencies must, under the law or ordinance the agency administers, be subject to judicial review. The agency must provide administrative and judicial remedies substantially equivalent to those required by the Act. The Act requires that a State or local agency administer a law which provides remedies which are substantially equivalent to those provided by the Act; it does not require that they be identical to those provided by the Act.

Paragraph (c) codifies section 807(b)(1) of the Act.

Paragraph (d) requires that the State or local law assure that no prohibition based on familial status applies to housing for older persons. Previously we have not required States or localities to include in their laws or ordinances those exceptions or exemptions pertaining to unfair housing practices which the Federal law contains. However, Congress exhibited serious concern that the prohibition against discrimination because of familial status not impinge on housing for older persons. The Congressional concern is reflected in this requirement.

Paragraph (e), formerly paragraph (c), is adopted and expanded to show that an analysis of the adequacy of a State or local fair housing law "on its face" must take into account regulations, directives and rules of procedure of a State or local agency as well as other relevant matters of State or local law or interpretations by competent authorities.

Paragraph (f) provides that a law administered by a certified agency may not permit it to contract out or delegate to a non-governmental authority its decision making authority, including the dismissal of a complaint and any action specified in §§ 115.3(a)(2)(iv) or 115.3(b)(1). This provision is considered to be necessary since some agencies appear to have relinquished their responsibilities and obligations under the law by entering into contracts with private organizations. The Department would have no authority to monitor such organizations and could not assure that a complaint filed with the Department would, when referred, receive the attention required by the Act.

Paragraph (g) provides for civil action by an aggrieved person and is based on section 813 (Enforcement by Private Persons) of the Act. The State or local agency must administer a law or ordinance which provides for such civil enforcement and the court should be empowered to: award actual and punitive damages; grant temporary or permanent injunctions; and allow reasonable attorney's fees and costs.

Section 115.3a Criteria for adequacy of the law—prohibition of discrimination because of handicap.

This section codifies the provisions of law prohibiting discrimination on the basis of handicap which must be included in a fair housing law administered by a certified agency. The uniqueness of the handicap prohibitions justifies this separate section. The prohibition against discrimination because of a handicap also provides that the law must contain certain provisions relating to design and construction of covered multifamily dwellings (as defined in Part 100) for first occupancy after March 13, 1991. While this date is 30 months after enactment of the regulations, it is important for a State or locality that desires to have its law certified in the near future to enact these provisions at or before the time it enacts the other provisions required by this section, so as to allow sufficient lead time for persons to have sufficient notice to include the necessary considerations in the design and construction phases of their development efforts.

Section 115.4 Performance standards

This section is retained in substantial part with editorial changes. The subsections of § 115.4(b) have been rearranged for clarity. Time limits for the commencement and processing of complaints are imposed and § 115.4(b)(3) requires that compliance reviews be conducted.

Section 115.5 Request for recognition.

This section only required editorial changes.

Section 115.6 Procedure for certification.

This section has been retained with editorial changes. A new paragraph (d) has been added (other paragraphs have been relettered) describing the effect of the act on agencies recognized prior to enactment.

The paragraph delineates the time period during which certification under this section is effective, *i.e.*, March 12, 1988 (effective date of the law) through January 13, 1992 unless the Secretary determines in an individual case that the State or local agency has not been able to meet the certification requirements because of exceptional circumstances and the Secretary extends the period to no later than September 13, 1992.

The States and localities which were recognized as substantially equivalent on September 12, 1988 (and whose agencies are therefore deemed certified for a limited period) are:

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon

Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities

ALASKA
  Anchorage
ARIZONA
  Phoenix
CONNECTICUT
  New Haven
DISTRICT OF COLUMBIA
  Washington
FLORIDA
  Broward County
  Clearwater
  Dade County (Metropolitan)
  Escambia County
  Gainesville
  Hillsborough Cty.
  Jacksonville
  Orlando
  Pensacola
  Pinellas County
  St. Petersburg
  Tallahassee
  Tampa
ILLINOIS
  Bloomington
  Danville
  Elgin
  Evanston
  Hazel Crest
  Park Forest
  Springfield
  Urbana
INDIANA
  Columbus
  East Chicago
  Ft. Wayne
  Gary
  Hammond
  Marion
  South Bend
IOWA
  Des Moines
  Dubuque
  Iowa City
KANSAS
  Kansas City
  Lawrence
  Olathe
  Saline
KENTUCKY
  Jefferson County
  Lexington-Fayette
MARYLAND
  Howard County
  Montgomery Cty.
  Prince Georges Cty.
MASSACHUSETTS
  Boston
  Cambridge
MINNESOTA
  Minneapolis
  St. Paul
MISSOURI
  Kansas City
  St. Louis
NEBRASKA
  Lincoln
  Omaha
NEW YORK
  New York
  Rockland County
NORTH CAROLINA
  Asheville
  Charlotte
  Mecklenburg Cty.
  New Hanover Cty.
  Raleigh
  Winston-Salem
OHIO
  Dayton
PENNSYLVANIA
  Allentown
  Harrisburg
  Philadelphia
  Pittsburgh
  Reading
  York
SOUTH DAKOTA
  Sioux Falls
TENNESSEE
  Knoxville
TEXAS
  Fort Worth
VIRGINIA
  Arlington County
WASHINGTON
  King County
  Seattle
  Tacoma
WEST VIRGINIA
  Beckley
  Charleston
  Huntington
WISCONSIN
  Beloit
  Madison

The States and localities which had entered into an agreement for interim referrals on September 12, 1988 (and whose agencies are therefore deemed cetified for a limited period) are:

States

Georgia
Ohio

Localities

Lee County, FL
St. Joseph, MO
Albany, NY
Durham, NC
Greensboro, NC

It is made clear that certification under this paragraph does not permit referral of complaints alleging discrimination based on "familial status" or "handicap." Since these are new protected classes, HUD has not analyzed the laws of these jurisdictions to determine whether "on its face" the law of any of these jurisdictions protects these classes in a manner substantially equivalent to the protection provided by the Act.

Similarly it is made clear that no State or locality certified under this paragraph is to be considered certified for the purpose of processing complaints alleging coercion, intimidation or threats as described in § 115.3(a)(5)(vii). HUD did not previously have authority to process such complaints and therefore HUD has not analyzed the laws of these jurisdictions to make the appropriate determination.

Further, the proposed regulation makes it clear that certification under this paragraph does not imply that the administrative or judicial remedies provided are substantially equivalent to those provided by the Act. This is a required conclusion since HUD could provide no administrative remedies before the Act and the current regulation, § 115.3(b), specifically excludes a determination concerning judicial protection and enforcement.

The requirement for publication of annual lists has been retained.

Section 115.7 Denial of certification, section 115.8 withdrawal of certification, and section 115.9 conferences.

These sections are retained with editorial changes.

Section 115.10 Consequences of certification.

This section is retained with editorial changes. A paragraph has been added to reinforce the principle that currently recognized agencies do not become certified with regard to complaints alleging discrimination on the basis of "handicap" or "familial status." A paragraph has been added to provide for action by the Secretary before referral to a certified agency in certain instances, as mandated by statute.

Section 115.11 Interim referrals.

Section 115.11 is retained. A time limitation of two years in interim status has been imposed. It was felt that two years was a sufficient time for an agency to show that it could conform to the performance standards of § 115.4. It is made clear that this does not apply to agencies that are certified under §115.6(d) since these agencies entered this status with no foreknowledge of such limitation.

PART 121—COLLECTION OF DATA

The Department is proposing to recodify the provisions of 24 CFR Part 100, entitled "Racial, Sex, and Ethnic Data", as a new Part 121 of Title 24. Part 100 was originally adopted in 1971 under the heading "Racial and Ethnic Data", to enable the Secretary of Housing and Urban Development to obtain information concerning minority-group identification to assist the Secretary in carrying out responsibility for administering the national policies prohibiting discrimination and providing for fair housing. In 1975, in light of the 1974 amendment of Title VIII to prohibit discrimination on the basis of sex, Part 100 was amended to provide for obtaining information on sex, as well as minority-group, identification.

Section 562 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) requires the Secretary of Housing and Urban Development to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefitting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by the Secretary, and to include a summary and evaluation of such data in the Secretary's annual report to the Congress.

Section 808(e)(6) of the Fair Housing Act, 42 U.S.C. 3608(e)(6), as added by section 7(b)(1)(D) of the Fair Housing Amendments Act of 1988, requires the Secretary to collect data on the race, color, religion, sex, national origin, age, handicap and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department, to the extent that such persons and households are within the coverage of the civil rights laws and executive orders referred to in section 808(f) of the Fair Housing Act or specified by the Secretary by publication in the Federal Register and to the extent that the Secretary determines the data to be necessary or appropriate.

The existing provisions of Part 100 are not adequate for the purpose of enabling the Secretary to carry out the new responsibilities mandated by the legislation described above. Accordingly, the Department proposes to revise those provisions to provide appropriate regulatory authority for this purpose.

Since Part 100 would be used for other regulations under this proposed rule, the Department proposes to move the revised provisions of that part to a new Part 121—Collection of Data.

Section 121.1 would describe the purpose of the new Part 121—to enable the Secretary to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department, and they direct the Secretary, among other things, to collect certain data to assess the extent of compliance with these policies.

Section 121.2 would provide for the furnishing of data by HUD program participants concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department. The language proposed for this section is drawn largely from that contained in section 808(e)(6) of the Fair Housing Act, described above.

Legislative Review Under Section 7(o) Of the Department of Housing and Urban Development Act and Comment Period Applicable to the Proposed Rule

The proposed rule was not submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate of the Committee on Banking, Finance and Urban Affairs of the House of Representatives for prepublication review as described in section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)). Section 7(o)(2) requires certain rules to be transmitted to both Committees at least 15 calendar days of continuous session before their publication for comment in the Federal Register. The last date for submission of a proposed rule to the committees for the 15-day prepublication review during 1988 was the first week of October 1988. The next period of 15 days of continuous session of Congress will not occur until early 1989.

Section 13 of the Fair Housing Amendments Act of 1988 provides that the Secretary shall issue rules to implement the amendments not later than 180 days after the enactment of the Act (*i.e.*, 180 days from September 13, 1988 or March 12, 1989). Section 13 of the 1988 Amendments also requires HUD to consult with other appropriate Federal agencies and to give public notice and an opportunity for comment on the rules. (Also see section 812(d) and 815 of the Act.)

Given the statutory 180-day time limit for the production of a final rule, the statutory requirements for public notice and comment, and the 1988 congressional schedule, the Department has interpreted the statutory rulemaking schedule as an expression of congressional intent to exempt this rulemaking from the legislative review requirements under section 7(o)(2).

As noted above, section 13 of the 1988 Amendments requires the Department to provide an opportunity for public notice and comment. For proposed rules, it is HUD's usual policy to afford the public not less than 60 days for the submission of public comments (see 24 CFR 10.1). However, based on the 180-day production schedule and the requirement that a final rule be effective by March 19, 1989, the Department has provided 30 days for public comment on this proposed rule.

Other Matters

This rule constitutes a "major rule" as defined in section 1(b) of Executive Order 12291. Analysis of the proposed rule indicates that it would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or have a significant adverse affect 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. However, analysis of the rule indicates that it may have an impact of $100 million or more. The Director of the Office of Management and Budget in accordance with section (6)(a)(4) of the Executive Order has waived the requirement for the preparation of a preliminary Regulatory Impact Analysis under section 3 of the Executive Order. This waiver is based on the Director's determination that compliance with the requirement for a preliminary Regulatory Impact Analysis may unduly delay the rule and may prohibit the issuance of a final rule effective by March 12, 1989. A final Regulatory Impact Analysis, however, will be prepared before the publication of the final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the

Office of General Counsel, Rules Docket Clerk, at the address listed above.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will require all entities, including small entities, to comply with certain accessibility standards in the design and construction of certain multifamily buildings, compliance with these standards will require a minimal expenditure of funds. In "The Estimated Cost of Accessible Buildings," a study prepared for HUD by Edward Steinfeld, Department of Architecture, State University of New York at Buffalo, the cost of redesigning a high rise tower to comply with ANSI A117.1 standards was estimated to be 0.98 percent of the total cost of the structure. The increase was 0.59 percent for garden style apartments. These estimates are based on compliance with the ANSI A117.1 standards which are more rigorous than the accessibility standards in the Fair Housing Act and are based on the redesign rather than a new design of a structure. HUD, therefore, believes that the figures overstate the economic burden of compliance. Moreover, HUD notes that the accessibility requirements will have no impact on many entities since such compliance with equal or more rigorous standards is already required under many State and local laws.

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 100.304(c)(2), 103.30, 115.3(a)(i), 115.5, 115.7 and 115.9 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements are provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—FAIR HOUSING AMENDMENTS ACT OF 1980

Description of information collection	Section No. 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual respones	Hours per response	Total hours
Policy and Procedures-Housing for Persons 55 years and older.	§ 100.304(c)(2)	1,231	1	1,231	1	1,231
Housing Discrimination Complaint Forms HUD-903 & 903A Spanish Version (2529-0011).	§§ 103.30 & 115.3(a)(i)	8,400	1	8,400	1	8,400
Certification Request Documentation (2529-0025)	§§ 115.5, 115.7 & 115.9	30	1	30	17	510
Total Annual Burden						10,141

Collections of information conducted or sponsored by HUD during the conduct of an administrative action or investigation against specific individuals or entities after a case file is opened are not covered by 5 CFR Part 1320—Controlling Paperwork Burdens on the Public (see 5 CFR 1320.3(c)). Accordingly, the tabulation above, does not include the information collection hours associated with §§ 104.420, 104.530, 104.540(b)(4), 104.540(c), 104.550(a), 104.550(b), 104.590, 104.600(b), 104.620(b)(2), 104.700(a), 104.720, 104.790(b), 104.910(d), 115.3(a) (ii), (iii) and (iv), and 115.4(b)(2)(i). No burden hours are reported for Part 110 since public disclosure of information originally supplied by the Federal Government to the recipient for the purposes of disclosure is not a collection of information. (See 5 CFR 1230.7(c)(2)). No burden hours are included for § 121.2 because information collection requirements on race, color, religion, sex, national origin, age, handicap, and family characteristics will be imposed under the regulations applicable to the specific HUD program.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this rule, if implemented, may have a significant impact on family formation, maintenace and general well-being because the rule provides Federal law enforcement assistance to families confronting housing discrimination based on race, color, religion, national origin, familial status or handicap. However, review under the Order is not required because the statutory mandate leaves little effective discretion in the Department to lessen the family impact. In any event, the purpose of the statute is to have a positive impact on family values by offering a measure of protection to persons confronting illegal discrimination.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612—Federalism, has determined that the policies contained in this rule would, if implemented, have federalism implications and are subject to review under the Order. Specifically, the amended statute continues to provide for referral to State and local fair housing enforcement agencies. However, in the future the determination of substantial equivalency will depend upon State and local enforcement machinery that matches up with the much-strengthened Federal law. Accordingly, the effect of the amended Fair Housing Act will be to encourage States and localities to amend their laws to match the Federal enforcement machinery, or suffer the eventual loss of recognition as substantially equivalent State or local agencies and possible loss of function if citizens of the jurisdiction do not choose to file complaints with State or local officials. Additionally, jurisdictions losing equivalency status will lose eligibility for grant funds available to co-enforcers of fair housing laws.

While the rule would have federalism impacts, review under the Federalism Executive Order is not required because the implementation of the statute leaves little discretion with HUD to lessen these impacts. HUD's statutory mandate is clear—it must accept complaints nationwide, and refer complaints for processing (after the initial grandfather period) only to jurisdictions with substantially equivalent laws. Moreover, since the statute addresses the Federalism issue by declaring that certain conduct will be illegal and by providing machinery for referral to State and local authority under appropriate circumstances, further study of Federalism implications could not appreciably affect the approach taken in the implementing regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number and title is 14.400 Equal Opportunity in Housing.)

List of Subjects

24 CFR Part 14

Equal access to justice, Lawyers, Claims.

24 CFR Part 100

Fair housing, Incorporation by reference, Nondiscrimination.

24 CFR Part 103

Administrative practice and procedure, Fair housing.

24 CFR Part 104

Administrative practice and procedure, Fair housing.

24 CFR Part 105

Administrative practice and procedure, Fair housing.

24 CFR Part 106

Administrative practice and procedure, Fair housing.

24 CFR Part 109

Advertising, Fair housing, Signs and symbols.

24 CFR Part 110

Fair housing, Signs and symbols.

24 CFR Part 115

Fair housing, Intergovernmental relations.

24 CFR Part 121

Fair housing, Statistics, Reporting and Recordkeeping requirements.

Accordingly, Title 24 of the Code of Federal Regulations would be amended to read as follows.

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

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

Authority: Sec. 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1); sec 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 14.115, the phrase "or" at the end of paragraph (a)(8) would be deleted, the period at the end of paragraph (a)(9) would be deleted and in its place the phrase "; or" would be added, and a new paragraph (a)(10) would be added to read as follows:

§ 14.115 Proceedings covered.

(a) * * *

(10) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–3620) and 24 CFR Part 104.

* * * * *

3. Part 100 would be redesignated as Part 121, and a new Part 100 would be added to read as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A—General

Sec.
100.1 Authority.
100.5 Scope.
100.10 Exemptions.
100.20 Definitions.

Subpart B—Discriminatory Housing Practices

100.50 Real estate practices prohibited.
100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.
100.65 Discrimination in terms, conditions and privileges and in services and facilities.
100.70 Other prohibited sale and rental conduct.
100.75 Discriminatory advertisements, statements and notices.
100.80 Discriminatory representations on the availability of dwellings.
100.85 Blockbusting.
100.90 Discrimination in the provision of brokerage services.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

100.110 Discriminatory practices in residential real estate-related transactions.
100.115 Residential real estate-related transactions.
100.120 Discrimination in the making of loans and in the provision of other financial assistance.
100.125 Discrimination in the purchasing of loans.
100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.
100.135 Unlawful practices in the selling, brokering or appraising of residential real property.

Subpart D—Prohibitions Against Discrimination Because of Handicap

100.200 Purpose.
100.201 Definitions.
100.202 General prohibitions against discrimination because of handicap.
100.203 Reasonable modifications of existing premises.
100.204 Reasonable accommodations.
100.205 Design and construction requirements.

Subpart E—Housing for Older Persons

100.300 Purpose.
100.301 Exemption.
100.302 State and Federal elderly housing programs.
100.303 62 or over housing.
100.304 55 or over housing.

Subpart F—Interference, Coercion or Intimidation

100.400 Prohibited interference, coercion or intimidation.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

§ 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in residential real estate related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally Assisted program or activity from other requirements applicable to buildings and dwellings.

§ 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members; or

(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding familial status applies with respect to housing for older persons as defined in Subpart E of this Part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time; and

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

§ 100.20 Definitions.

As used in this Part:

"Aggrieved Person" includes any person who—

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Broker" or "Agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any real estate related transactions.

"Department" means the Department of Housing and Urban Development.

"Discriminatory Housing Practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

"Dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof, including mobile home parks, trailer courts, condominiums, cooperatives and time-sharing properties.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" is defined in § 100.201.

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

"Person in the business of selling or renting" means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

"Secretary" means the Secretary of the Department of Housing and Urban Development.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Subpart B—Discriminatory Housing Practices

§ 100.50 Real estate practices prohibited.

(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in the subpart. For example, the conduct described in § 100.60(b)(3)–(5) would constitute a violation of § 100.65(a) as well as § 100.60(a).

(b) It shall be unlawful to:

(1) Refuse to sell or rent a dwelling after a *bona fide* offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions or privileges of sale or rental, or in the provision of services or facilities in connection with sales or rentals because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status or national origin.

(4) Make, print or publish, or cause to be made, printed or published, any advertisement, notice or statement that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in,

any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions of membership or participation, because of race, color, religion, sex, familial status, or national origin.

(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in Subpart D of the Part.

§ 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

(a) It is unlawful for a person to refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, because of race, color, religion, sex, familial status, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a *bona fide* offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing different information, promotional activity, encouragement or salesmanship because of race, color, religion, sex, handicap, familial status, or national origin or operating a business in a manner that conveys that housing is available only to persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(6) Evicting any tenants because of race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting discounts, rebates, gifts or any other incentives, benefits or privileges available to persons in connection with the sale or rental of dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing or delaying maintenance or repairs of sale or rental dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

§ 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighorhood or development.

(b) It shall be unlawful to because of race, color, religion, sex, handicap, familial status, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a), which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Directing any person to dwellings in a particular community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin or referring because of race, color, religion, sex, handicap, familial status, or national origin any purchaser or renter to persons in the business of selling or renting dwellings who sell or rent dwelling or provide sales or rental services principally in areas predominantly or increasingly inhabited by persons of the prospect's race, color, religion, sex, handicap, familial status, or national origin.

(2) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or because of race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(3) Exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development in order to discourage the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Communicating to any prospective purchaser or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Assigning any person to a particular section of a community, neighborhood or development or to a particular floor of a building because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited sales and rental activities under paragraph (b) include, but are not limited to:

(1) Employing policies, procedures or activities with respect to the sale or rental of dwellings to encourage, permit or reward discriminatory housing practices, such as assigning employees, brokers or agents to a sales or rental office because of race, color, religion, sex, handicap, familial status, or national origin of persons residing in the area of that office, or varying compensation provided to sales and rental employees, brokers or agents because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Engaging in conduct which limits information available to a prospective purchaser or renter, such as showing a prospective purchaser or renter less desirable units in a project, providing different or more limited tours of a subdivision, neighborhood or community, refusing to deal with persons who cannot speak English or who cannot see or hear, when there is a means to do so or using different listing books in order to discourage persons from purchasing or renting dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(4) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin or refusing to deal with certain brokers or agents because one more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origins.

(5) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Publishing advertisements displaying the equal housing opportunity slogan, logotype or statement selectively because of race, color, religion, sex, handicap, familial status, or national origin, such as by using such fair housing advertising techniques in predominantly minority areas and integrated areas, but not using these techniques for dwellings located in primarily nonminority areas.

§ 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish or cause to be made printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter based on race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings in order to deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Part 109 of this Title 24 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act in investigating complaints alleging discriminatory housing practices involving advertising.

§ 100.80 Discriminatory representations on the availability of dwellings.

(a) It shall be unlawful because of race, color, religion, sex, handicap, familial status, or national origin to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

(3) Enforcing covenants or other deed, trust or lease provisions in order to preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.85 Blockbusting.

(a) It shall be unalwful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct to convey to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it in order to encourage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin or with handicaps can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools or other services or facilities.

(3) Engaging in uninvited solicitations for listings in a neighborhood which are different or more intense than uninvited solicitation activity in other neighborhoods, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or

conditions of such access, membership or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in real estate sales or rental organization based on race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Real Estate-Related Transactions

§ 100.110 Discriminatory practices in real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

§ 100.115 Residential real estate-related transactions.

(a) The term "real estate-related transactions" means:

(1) The making or purchasing of loans or providing other financial assistance—

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) Secured by residential real estate, or

(2) The selling, brokering or appraising of residential real estate property.

§ 100.120 Discrimination in the availability of loans and other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to:

(1) Refusing to provide a loan or other financial assistance to any person for the purchase, construction, repair or maintenance of a dwelling or refusing to provide a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Making or causing to be made any advertisement or any oral or written notice or statement, as described in § 100.75(b) of this Part, with respect to loans or other financial assistance for dwellings or which are secured by residential real estate indicating any preference, limitation, condition, or distinction, or an intention to make any preference, limitation, condition, or distinction, because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Denying or limiting services, facilities or privileges in connection with a loan or other financial assistance for a dwelling, or, in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Discouraging any person from inquiring about or making an application for a loan or other financial assistance for a dwelling, or in connection with a loan or other financial assistance which is or would be secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Failing or refusing to provide information, or to accept an application or to approve a long or other financial assistance for a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of the present or prospective residents or occupants of dwellings in the area.

(7) Engaging in any conduct, because of the race, color, religion, sex, handicap, familial status, or national origin of any person seeking a loan or other financial assistance, or because of the race, color, religion, sex, handicap, familial status, or national origin of any person associated with such persons with regard to a loan or other financial assistance for a dwelling which would otherwise make unavailable or deny a dwelling.

§ 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts of securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of person in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different qualification requirements, processing procedures, or evaluation standards in accepting applications or in approving loans and other financial assistance for dwellings

or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Determining the type of loan or other financial assistance to be provided with respect to dwelling or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Failing to make available the same information or the same types of loans or other financial assistance which are for a dwelling or which are, or would be, secured by dwellings because of the race, color, religion, sex, handicap, familial status, or national origin of the present or the prospective residents or occupants of dwellings in the area of the dwelling for which such loan or other financial assistance is sought or in the area in which a dwelling, which is provided for security, is located.

§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the terms or conditions of the availability of such services because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to:

(1) Taking into consideration any factor in connection with the selling, brokering or appraising of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Imposing different standards or procedures in the selling or brokering of dwellings or in conducting an appraisal of residential real property because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Instructing or encouraging any person, either by statement or conduct, or imposing standards requiring any person, to consider any factor which relates to race, color, religion, sex, handicap, familial status, or national origin in the selling or brokering of residential real-estate transactions or in making an appraisal of residential real property.

(4) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal takes into consideration a factor or factors based on race, color, religion, sex, handicap, familial status, or national origin, or using any information contained in an appraisal report with respect to an appraisal which relates to race, color, religion, sex, handicap, familial status, or national origin.

Subpart D—Prohibitions Against Discrimination Because of Handicap

§ 100.200 Purpose.

The purpose of this subpart is to effectuate sections (6)(a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

§ 100.201 Definitions.

As used in this subpart:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an "accessible route".

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. 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 American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 complies with the requirements of this paragraph.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made advailable for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor

dwelling units in other buildings consisting of 4 or more dwelling units.

"Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person or family. Examples of dwelling units include single family detached houses, townhouses, apartments, and condominiums.

"Entrance" means any access point to a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Phyiscal or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not, however, increase for handicapped persons any customarily required security deposit for this purpose.

(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear or tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not undermine the integrity of the wall or otherwise interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may *not*, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

§ 100.204 Reasonable accommodations.

(a) It is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of §100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six town houses on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter each townhouse. Since there is no practical way to provide an accessible route to any of the town houses, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c).

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3).

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c)

satisfies the requirements of paragraphs (a) and (c).

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c).

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part shall not apply to housing for older persons if it meets the conditions in §§ 100.302, 100.303 or 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over.

(b) The following examples illustrate the application of paragraph (a):

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were newly occupied after September 13, 1988 were occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *Provided that* the housing satisfies the requirements of § 100.304(b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical and social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. The following factors, among others, are relevant in determining whether a housing facility satisfies the requirements of paragraph (b)(2)—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical and social needs of older persons.

(ii) The cost of providing such services, including the availability of such services at little or no cost to the owners or managers of the facility.

(iii) The amount of rent charged, if the dwellings are rented. The price of the dwellings, if they are offered for sale.

(iv) The income range of the residents of the housing facility.

(v) The demand for housing for older persons in the relevant geographic area.

(vi) The range of housing choices for older persons within the relevant geographic area.

(vii) The availability of other similarly priced housing for older persons in the relevant geographic area.

(viii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55 years of age. These 18 units were all occupied by new occupants after September 13, 1988. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption. If John and Mary had both been under 55 years old, they still could have occupied a unit without Valley Heights losing its exemption because, in that case, 80 out of 99 occupied units (81%) would have been occupied by at least one person 55 years of age or older.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under paragraph (d)(1), Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d), Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit *until* 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (*i.e.*, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Subpart F—Interference, Coercion, or Intimidation

§ 100.400. Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means to deny or limit the benefits provided a person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

(3) Threatening an employee or agent with dismissal or an adverse employment action or taking such adverse employment action for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or to encourage such other persons to exercise rights granted or protected by this part.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.

4. Part 103 would be added to read as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Sec.

Subpart B—Complaints

Subpart C—Referral of Complaints to State and Local Agencies

Subpart D—Investigation Procedures

Subpart E—Conciliation Procedures

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 103.1 Purpose and applicability.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as amended by the Fair Housing Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed on or after March 12, 1989 that involve alleged discriminatory housing practices that occur on or after March 12, 1989 or involve alleged discriminatory practices that occur before and continue on or after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occur before and continue on or after March 12, 1989, where the complainant elects under § 105.81 to proceed under this part.

(2) Part 104 governs the administrative proceedings before an administrative law judge adjudicating charges issued under § 103.405.

(3) Part 105 contains the procedures established by HUD for the investigation and conciliation of complaints filed with HUD under section 810 of the Fair Housing Act, as it existed prior to the amendment of the Act by the Fair Housing Amendments Act of 1988.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

§ 103.5 Other civil rights authorities.

In addition to the Fair Housing Act, other civil rights authorities may be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a complaint filed under section 810 of the Fair Housing Act is also prohibited from engaging in similar practices under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order No. 11063 of November 20, 1962, on Equal Opportunity in Housing (27 FR 11527–30, November 24, 1962), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or other applicable law, the person may also be subject to action by HUD or other Federal agencies under the rules, regulations, and procedures prescribed under Title VI (24 CFR Parts 1 and 2), section 109 (24 CFR 570.602)), Executive Order 11063 (24 CFR Part 107), section 504 (24 CFR Part 8), or other applicable law.

§ 103.9 Definitions.

As used in this part,

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in HUD.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act, as described in Part 100.

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, including mobile home parks and trailer courts.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

HUD means the United States Department of Housing and Urban Development.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts,unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, fiduciaries, governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

Respondent means:

(a) The person or other entity accused in a complaint of a discriminatory housing practice; and

(b) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under § 103.50.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Substantially equivalent State of local agency means a State or local agency certified by HUD under 24 CFR Part 115 (including agencies certified for interim referrals).

To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Complaints

§ 103.10 Submission of information.

(a) Any person may submit information concerning alleged discriminatory housing practices to the Assistant Secretary. Where the information constitutes a complaint within the meaning of this part and is furnished by an aggrieved person, it will be considered to be filed under § 103.40. Where additional information is required for purposes of perfecting a complaint under this part, HUD shall advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

(b) If the submitted information warrants, HUD may also concurrently initiate compliance reviews under other appropriate civil rights authorities, such as Executive Order No. 11063 on Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, section 109 of

the Housing and Community Development Act of 1974, or section 504 of the Rehabilitation Act of 1973. The information may also be made available to any other Federal, State or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant, where desired by the informant or claimant.

§ 103.15 Who may file complaints.

Any aggrieved person or the Assistant Secretary may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

§ 103.20 Persons against whom complaints may be filed.

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope or his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

§ 103.25 Where to file complaints.

(a)(1) Complaints may be delivered or mailed to the Assistant Secretary. Complaints should be sent to: Fair Housing, Department of Housing and Urban Development, Washington DC 20410, or any Regional or Field Office of HUD. A list of Regional Offices (with addresses and areas of jurisdiction) and Field Offices (with addresses) is contained in an appendix to Part 105.

(2) Aggrieved persons may provide information to be contained in a complaint by telephone to any Regional or Field Office of HUD. HUD will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and attested to as provided in § 103.30(a).

(3) Complaints may be delivered or mailed to any substantially equivalent State or local agency. Complaints filed with a substantially equivalent State or local agency shall be considered to be complaints dual filed with the agency under its own law, and with HUD under this part.

(b) Generally, complaints will be processed through HUD's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred. However, where a complaint has been identified for systemic processing under § 103.205, that complaint may be processed in the Office of the Assistant Secretary in Washington, D.C.

§ 103.30 Form and content of complaint.

(a) Each complaint must be in writing and must be signed by the aggrieved person filing the complaint. If the complaint is filed by HUD, it will be signed by the Assistant Secretary. The complaint shall be attested to before a notary public or a duly authorized representative of the Assistant Secretary. The signature and attestation may be made at any time during the investigation.

(b) The Assistant Secretary may require complaints to be made on prescribed forms. Complaint forms will be available in any Regional or Field Office of HUD or in any substantially equivalent State or local agency. Notwithstanding the requirement for use of the prescribed form, HUD will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (including any such statement filed with a substantially equivalent State or local agency) as a Fair Housing Act complaint. Personnel in these offices will provide appropriate assistance in filling out forms and in filing a complaint.

(c) Each complaint must contain substantially the following information:

(1) The name and address of the aggrieved person.

(2) The name and address of the respondent.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

§ 103.40 Date of filing of complaint.

(a) Except as provided in paragraph (b) below, a complaint is filed when it is received by HUD, or dual filed with HUD through a substantially equivalent State or local agency, in a form that reasonably meets the standards of § 103.30.

(b) The Assistant Secretary may determine that a complaint is filed for the pruposes of the one-year period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of HUD) identifying the parties and describing generally the alleged discriminatory housing practice.

(c) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely if filed within one year of the last alleged occurrence of that practice.

§ 103.42 Amendment of complaint.

Complainants may reasonably and fairly amend the complaint at any time to cure technical defects or omissions, including failure to attest to a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondent under § 103.50, amended complaints will be considered as having been made as of the original filing date.

§ 103.45 Service of notice on aggrieved person.

Upon the filing of a complaint, the Assistant Secretary shall notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice must:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing

(b) Include a copy of the complaint.

(c) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this part and Part 104 of this title.

(d) Advise the aggrieved person of this or her right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(e) Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.50 Notification of respondent; joinder of additional or substitute respondents.

(a) Within ten days of the filing of a complaint under § 103.40 or the filing of an amended complaint under § 103.42, the Assistant Secretary shall serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Subpart D of this part as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice under this section within ten days of the identification.

(b)(1) The notice shall identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

(2) The notice shall state the date that the complaint was accepted for filing.

(3) The notice shall advise the respondent of the time limits applicable to complaint processing under this part and of the procedural rights and obligations of the respondent under this part and Part 104, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice.

(4) The notice shall advise the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice shall explain the basis for the Assistant Secretary's belief that the joined person is properly joined as a respondent.

(6) The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.55 Answer to complaint.

(a) The respondent may file an answer not later than ten days after receipt of the notice described in § 103.50. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be attested to before a notary public or a duly authorized representative of the Assistant Secretary.

(b) An answer may be reasonably and fairly amended at any time with the consent of the Assistant Secretary.

Subpart C—Referral of Complaints to State and Local Agencies

§ 103.100 Notification and referral to substantially equivalent State or local agencies.

(a) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under Part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary shall notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint. The Assistant Secretary shall notify the State or local agency of the referral by certified mail.

(b) The Assistant Secretary shall notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under paragraph (a) of this section. The notice shall advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

§ 103.105 Cessation of action on referred complaints.

(a) After a complaint is referred under § 103.100, the Assistant Secretary shall not take any further action with respect to the complaint, except as provided in § 103.110.

(b) A referral under § 103.100 does not prohibit the Assistant Secretary from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to departmental programs (see § 103.5).

§ 103.110 Reactivation of referred complaints.

The Assistant Secretary may reactivate a complaint referred under § 103.100 for processing by HUD if:

(a) The substantially equivalent State or local agency consents to the reactivation;

(b) The Assistant Secretary determines that, with respect to the alleged discriminatory housing practice, the agency no longer qualifies for certification as a substantially equivalent State or local agency and may not accept interim referrals; or

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD shall not reactivate a complaint under this paragraph (c) until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, the Assistant Secretary may leave the complaint with the agency for a reasonable time, notwithstanding the expiration of the 30-day period or a previous failure to carry the proceedings forward with reasonable promptness.

§ 103.115 Notification upon reactivation.

(a) Whenever a complaint referred to a State or local fair housing agency under § 103.100 is reactivated under

§ 103.110, the Assistant Secretary shall notify the substantially equivalent State or local agency, the aggrieved person and the respondent of HUD's reactivation. The notification must be made by certified mail or personal service.

(b) The notification to the respondent and the aggrieved person shall advise the aggrieved person and the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person and the respondent under this part and Part 104. The notice shall advise the respondent and the aggrieved person of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

Subpart D—Investigation Procedures

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary shall initiate an investigation. The purposes of an investigation are:

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

(b) Upon the written direction of the Assistant Secretary, HUD may initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B. Such investigations shall be conducted in accordance with the procedures described under this subpart.

§ 103.205 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices contained in a complaint are prevasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will impact on a large number of persons, the Assistant Secretary may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 103.215 Conduct of investigation.

(a) In conducting investigations under this part, the Assistant Secretary shall seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under Part 104, except that the Assistant Secretary shall have the power to issue subpoenas described in § 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel before issuance.

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. In accordance with section 808 (d) and (e) of the Fair Housing Act and Executive Order No. 12259, other Federal agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including investigations under this part.

§ 103.225 Completion of investigation.

The investigation will remain open until the reasonable cause determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, HUD shall complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.230 Final investigative report.

(a) At the end of each investigation under this part, the Assistant Secretary shall prepare a final investigative report. The investigative report shall contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 104 or a civil action under Title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation.

Subpart E—Conciliation Procedures

§ 103.300 Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the

General Counsel, the Assistant Secretary shall, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, HUD shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

§ 103.310 Conciliation agreement.

(a) The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in § 103.315. The provisions that may be sought for the vindication of the public interest are described in § 103.320.

(b)(1) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the Assistant Secretary, who will indicate approval by signing the agreement. The Assistant Secretary shall approve an agreement and, if the Assistant Secretary is the complainant, shall execute the agreement, only if:

(i) The complainant and the respondent agree to the relief accorded the aggrieved person;

(ii) The provisions of the agreement will adequately vindicate the public interest; and

(iii) If the Assistant Secretary is the complainant, the aggrieved person is satisfied with the relief provided to protect his or her interest.

(2) The General Counsel may issue a charge under § 103.405 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

§ 103.315 Relief sought for aggrieved persons.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(2) Other make-whole relief, including access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

§ 103.320 Provisions sought for the public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Remedial affirmative activities to overcome discriminatory housing practices.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

§ 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD shall terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

§ 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this party may be made public, used in an investigation, or used as evidence in a subsequent administrative hearing under Part 104 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purpose of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

§ 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the General Counsel shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

§ 103.400 Reasonable cause determination.

(a) If a conciliation agreement under § 103.310 has not been executed by the complainant and the respondent, and approved by the Assistant Secretary, the General Counsel, within the time limits set forth in paragraph (c) of this section below, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based on all facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation. In making the reasonable cause determination, the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Federal court.

(1) If the General Counsel determines that reasonable cause exists, the General Counsel shall immediately issue a charge under § 103.405 on behalf of the

aggrieved person, unless the matter involves the legality of any State or local zoning or other land use law or ordinance. If the General Counsel determines that the matter involves local zoning or land use laws or ordinances, the General Counsel shall immediately refer the matter to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

(2) If the General Counsel determines that no reasonable cause exists, the General Counsel shall dismiss the complaint, notify the aggrieved person and the respondent of the dismissal by certified mail or personal service and make public disclosure of the dismissal.

(b) The General Counsel may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the General Counsel shall so notify the aggrieved person and the respondent by certified mail or personal service.

(c)(1) The General Counsel shall make a reasonable cause determination within 100 days after the filing of the complaint (or where the Assistat Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the General Counsel is unable to make the determination within the time limits specified in pragraph (c)(1), HUD will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.405 Issuance of charge.

(a) A charge:

(1) Shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under Subpart B of this part.

(b) Within three days after the issuance of the charge, the General Counsel shall:

(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;

(2) File the charge along with the notifications described in § 104.410(b) with Office of Administrative Law Judges;

(3) Serve the charge and notifications in accordance with § 104.410(c); and

(4) Notify the Assistant Secretary of the filing of the charge.

§ 103.410 Election of administrative proceeding or civil action.

(a) If a charge is issued under § 103.405, a complainant (including the General Counsel, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under Part 104, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 days after the receipt of service of the charge, or in the case of the General Counsel, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Part 104.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under Part 104.

(d) If an election is made under this section, the General Counsel shall promptly notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure.

Subpart G—Other Actions by the Department

§ 103.500 Prompt judicial action.

(a) If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of this part or Part 104, the General Counsel will request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. Before making the determination that prompt judicial action is necessary, the General Counsel will consult with the Assistant Attorney General for the Civil Rights Division. The commencement of a civil action by the Attorney General under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under Part 104.

(b) If the General Counsel has reason to believe that a basis exists for the commencement of proceedings under section 814(a) of the Fair Housing Act (Pattern or Practice Cases), proceedings under section 814(c) of the Fair Housing Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authorities, the General Counsel will transmit the information upon which that belief is based to the Attorney General and to other appropriate authorities.

§ 103.510 Other action by HUD.

In addition to the actions described in § 103.500, HUD may pursue one or more of the following courses of action:

(a) Refer the matter to the Attorney General for appropriate action (e.g., enforcement of criminal penalties under section 811(c) of the Act).

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 24 CFR Part 24, or initiate other actions leading to the imposition of administrative sanctions where HUD determines that such actions are necessary to the effective operation and administration of Federal programs or activities.

(c) Take appropriate steps to initiate proceedings under:

(1) 24 CFR Part 1, implementing Title VI of the Civil Rights Act of 1964;

(2) 24 CFR 570.912, implementing section 109 of the Housing and Community Development Act of 1974;

(3) 24 CFR Part 8, implementing section 504 of the Rehabilitation Act of 1973; or

(4) 24 CFR Part 107, implementing Executive Order No. 11063.

(d) Inform any other Federal, State or local agency with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

5. A new Part 104 would be added to read as follows:

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

Subpart A—General Information

Sec.

Subpart B—Administrative Law Judge

Subpart C—Parties

Subpart D—Pleadings and Motions

Subpart E—Discovery

Subpart F—Subpoenas

Subpart G—Prehearing Procedures

Subpart H—Hearing Procedures

Subpart I—Dismissals and Decisions

Subpart J—Judicial Review and Enforcement of Final Decision

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 104.10 Scope of rules.

(a) *Applicability.* This part contains the rules of practice and procedure established by the Department of Housing and Urban Development for administrative proceedings before an Administrative Law Judge adjudicating the claims asserted in a charge issued under Part 103, where no party—the complainant, the respondent, or an aggrieved party—elects to have the claims decided in a civil action under section 812(o) of the Fair Housing Act. The provisions of this part do not apply to complaints processed under Part 105.

(b) *General application of rules.* Hearings under this subpart shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(c) *Conduct of proceedings.* The Department will reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

§ 104.20 Definitions.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Attorney General means the Attorney General of the United States.

Charge means the statement of facts issued under § 103.405 upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Complainant means the person (including the Assistant Secretary for Fair Housing and Equal Opportunity) who filed the complaint under Part 103 of this title.

Complaint means a complaint filed under Part 103 of this title.

Discriminatory housing practice means an act that is unlawful under Part 100 of this title.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620, as amended by the Fair Housing Amendments Act of 1988.

General Counsel means the General Counsel of HUD.

Hearing means that part of an administrative proceeding that involves the submission of evidence, either by oral presentation or written submission, and includes the submission of briefs and oral arguments on the evidence and applicable law.

HUD means the United States Department of Housing and Urban Development.

Party means a person or agency named or admitted as a party to a proceeding. Party includes an aggrieved person who intervenes under § 104.430.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title II of the United States Code, receivers, fiduciaries governmental entities, banks, building and loan associations, or other firms or enterprises.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

Respondent means the person accused in a charge of a discriminatory housing practice.

State means any of the several States, the District of Columbia, the Commonweath of Puerto Rico, or any of the territories and possessions of the United States.

§ 104.30 Time computations.

(a) *In general.* In computing time under this part, the time period shall begin the day following the act, event, or default and include the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in whch case the time period includes the next

business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of issuance shall be the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.*

(1) Documents shall not be considered filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by mail, three days shall be added to the prescribed period.

§ 104.40 Service and filing.

(a) *Generally.* Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Room 2158, 451 Seventh Street, SW., Washington, DC 20410.

(b) *By parties.* Parties shall file all documents with the Office of Administrative Law Judges with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve all notices, order, decisions and all other documents by mail to the last known address.

Subpart B—Administrative Law Judge

§ 104.100 Designation.

Proceedings under this part shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105. The presiding administrative law judge shall be designated by the Chief Administrative Law Judge at HUD.

§ 104.110 Authority.

The administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings including, but not limited to, the power:

(a) To conduct hearings in accordance with this part.

(b) To administer oaths and affirmations and examine witnesses.

(c) To issue subpoenas in accordance with § 104.590.

(d) To rule on offers of proof and receive evidence.

(e) To take depositions or have depositions taken when the ends of justice would be served.

(f) To regulate the course of the hearing and the conduct of parties and their counsel.

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(h) To dispose of motions, procedural requests, and similar matters.

(i) To make initial decisions as described under Subpart I of this Part.

(j) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

§ 104.120 Disqualification.

(a) *Disqualification.* If an administrative law judge finds that there is a basis for his or her disqualification in a proceeding, the administrative law judge shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief Administrative Law Judge.

(b) *Motion for recusal.* If a party believes that the presiding administrative law judge should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the administrative law judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The administrative law judge shall rule on the motion. If the administrative law judge denies the motion, the administrative law judge shall incorporate a written statement of the reasons for the denial in the record.

(c) *Redesignation of administrative law judge.* If an administrative law judge is disqualified, the Chief Administrative Law Judge shall designate another administrative law judge to preside over further proceedings.

§ 104.130 Ex parte communications.

(a) *General.* An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the administrative law judge assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) *Prohibition.* Ex parte communications are prohibited.

(c) *Procedure upon receipt.* If the administrative law judge receives an ex parte communication that the administrative law judge knows or has reason to believe is prohibited, the administrative law judge shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding, and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 104.140 Separation of functions.

No officer, employee, or agent of the Federal government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the administrative law judge, except as a witness or counsel during the proceedings.

Subpart C—Parties

§ 104.200 In general.

(a) *Parties.* Parties to the proceeding include:

(1) HUD. HUD files the charge under § 103.405 of this title seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) The respondent. The respondent is the person named in the charge issued

under § 103.405 of this title against whom relief is sought.

(3) Intervenors. Any aggrieved person may intervene as a party to the proceeding. No other intervention will be permitted.

(b) *Rights of parties.* Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

(c) *Amicus curiae.* Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

§ 104.210 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation, trust or association may represent the corporation, trust or association.

(4) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(5) An attorney admitted to practice before a Federal Court or the highest court in any State. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the administrative law judge.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

§ 104.220 Standards of Conduct.

(a) *In general.* All persons appearing in proceedings under this part shall act with integrity and in an ethical manner.

(b) *Exclusion.* The administrative law judge may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding by an administrative law judge, the administrative law judge shall include in the record the reasons for the action. An attorney who is suspended or barred from participation may appeal to the Chief Administrative Law Judge. The proceeding shall not be delayed or suspended pending disposition on the appeal, except that the administrative law judge shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

Subpart D—Pleadings and motions

§ 104.400 In general.

(a) *Form.* Every pleading, motion, brief, or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned by the Office of Administrative Law Judges, and the designation of the type of document (*e.g.*, charge, answer or motion to dismiss).

(b) *Signature.* Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief there is good ground to support the document; and that it is not interposed for delay.

(c) *Timely filing.* The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this part.

§ 104.410 The charge.

(a) *Filing and service.* Within three days after the issuance of a charge under § 103.405, the General Counsel shall file the charge with the Chief Docket Clerk in the Office of Administrative Law Judges and serve copies (with the additional information required under paragraph (b) of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

(b) *Contents.* The charge shall consist of a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the charge:

(1) The notice shall state that a complaint (including HUD, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative proceeding under this part. The notice shall state that the election must be made not later than 20 days after the receipt of the service of the charge. Where HUD is the complainant, the General Counsel must make the election not later than 20 days after the service of the charge. The notice shall state that the notification of the election must be served on the Chief Docket Clerk in the Office of Administrative Law Judges, the respondent, the aggrieved party on whose behalf the complaint was filed, and the General Counsel.

(2) The notice shall state that if an election is made under paragraph (b)(1) to use the administrative procedure:

(i) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days of the date of service of the charge.

(iii) The aggrieved person may intervene as a party to the administrative proceeding within 30 days of the date of service of the charge.

(iv) All discovery must be concluded 15 days before the date set for hearing.

§ 104.420 Answer to charge.

Within the 30 days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgment as a matter of law shall file an answer to the charge. An answer shall include:

(a) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(b) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

§ 104.430 Request for intervention.

Within 30 days after the service of the charge, any aggrieved person may file a request for intervention and participate as a party to the proceeding. No other intervention will be permitted.

§ 104.440 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right. HUD may amend its charge once as a matter of right prior to filing of the answer.

(2) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

(3) Conformance to the evidence. When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(b) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 104.450 Motions.

(a) *Motions.* Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing. Motions or requests made during an appearance before the administrative law judge shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(b) *Answers to written motions.* Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to the motion. Unless otherwise ordered by the administrative law judge, no further responsive documents may be filed.

(c) *Oral argument.* The administrative law judge may order oral argument on any motion.

Subpart E—Discovery

§ 104.500 Discovery.

(a) *In general.* This subpart governs discovery in aid of administrative proceedings under this part. Except for time periods stated in these rules, to the extent that these rules conflict with discovery procedures in aid of civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Scope.* The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the administrative law judge, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Parties may obtain discovery by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories.

(3) Requests for the production of documents or other evidence, for inspection and other purposes, and physical and mental examinations.

(4) Requests for admissions.

(d) *Frequency and sequence.* Unless otherwise ordered by the administrative law judge, the frequency or sequence of these methods is not limited.

(e) *Completion of discovery.* All discovery shall be completed 15 days before the date scheduled for hearing.

§ 104.510 Depositions.

(a) *In general.* Depositions may be taken upon oral examination or upon written interrogatory before any person having the power to administer oaths.

(b) *Notice.* Any party desiring to take the deposition of a witness shall indicate to the witness and to all parties the time and place of the deposition, the name and post office address of the person before whom the deposition is to be taken, the name and address of the witness, and the subject matter of the testimony of the witness. Notice of the taking of a deposition shall be given not less than five days before the deposition is scheduled. The attendance of a witness may be compelled by subpoena under § 104.590.

(c) *Procedure at deposition.* Each witness deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. The questions propounded and all answers and objections made to the propounded questions shall be reduced to writing; read by or to, and subscribed by, the witness; and certified by the person before whom the deposition was taken.

(d) *Objections.* During a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questioning. Upon the request for suspension, the deposition will be adjourned. The objecting party or deponent must immediately move the administrative law judge for a ruling on the objections. The administrative law judge may then limit the scope or manner of taking the deposition.

(e) *Payment of costs of deposition.* The party requesting the deposition shall bear all costs of the deposition.

§ 104.520 Use of deposition at hearings.

(a) *In general.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses may be used by any party for any purpose, unless the administrative law judge rules that such use is unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of

presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at the time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

(3) Objections to the form of written interrogatories are waived unless served in writing upon the party propounding the interrogatories.

§ 104.530 Written interrogatories.

(a) *Written interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party.

(b) *Responses to written interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by the counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties within 15 days after service of the interrogatories.

§ 104.540 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examinations.

(a) *In general.* Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section; or

(3) Submit to a physical or mental examination by a physician.

(b) *Contents of request.* The request shall:

(1) Set forth the items to be inspected by individual item or by category of items;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place and manner for making the inspection and performing the related acts; and

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. A report of the examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

(c) *Response to request.* Within 15 days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If an objection is made, the response must state the reasons for the objection

§ 104.550 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) *Response to request.* (1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, the party to whom the request is directed serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request is directed may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that it h as made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency of response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon the motion of a party, the administrative law judge permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purposes, and may not be used against the party in any other proceeding.

(e) *Service of requests.* Each request for admission and each written response must be served on all parties and filed with the Office of Administrative Law Judges.

§ 104.560 Supplementation of responses.

(a) *In general.* A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired after the response was made except:

(1) A party is under a duty to timely supplement responses with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to timely amend a previous response if the party later obtains information upon the basis of which:

(i) The party knows the response was incorrect when made; or

(ii) The party knows the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(b) *By order or agreement.* A duty to supplement responses may be imposed by order of the administrative law judge or by agreement of the parties.

§ 104.570 Protective orders.

Upon motion of a party or a person from whom discovery is sought or in accordance with § 104.580(c), the administrative law judge may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(a) The discovery may not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

(c) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(d) Certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

(e) Discovery may be conducted with no one present other than persons designated by the administrative law judge;

(f) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(g) To protect privileged matters, the administrative law judge may take such other action permitted under § 104.740.

§ 104.580 Failure to make or cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to answer a question propounded, or a party upon whom a request is made under §§ 104.530 through 104.550 fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order compelling a response or an inspection in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) *Evasive or incomplete answers.* For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) *Administrative law judge ruling.* In ruling on a motion under this section, the administrative law judge may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under paragragh (d) of this section, or may enter a protective order under § 104.570.

(d) *Sanctions.* If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses), the administrative law judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought;

(4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) Take such order action as may be appropriate.

Subpart F—Subpoenas

§ 104.590 Subpoenas.

(a) *In general.* This section governs the issuance of subpoenas in administrative proceedings under this part. Except for time periods stated in these rules, to the extent that this rule conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the Chief Administrative Law Judge or the presiding administrative law judge may issue a subpoena requiring:

(1) The attendance of a witness for the purpose of giving testimony at a deposition;

(2) The attendance of a witness for the purpose of giving testimony at a hearing; and

(3) The production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoena of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate.

(d) *Service.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) *Amount of witness fees and mileage.* A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the Department.

(f) *Motion to quash or limit subpoena.* Upon a motion by the person served with a subpoena or by a party, made within five days of the service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents.

Where the circumstances require, the administrative law judg may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) *Failure to comply with subpoena.* If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under section 814(c) of the Fair Housing Act.

Subpart G—Prehearing Procedures

§ 104.600 Prehearing statements.

(a) *In general.* Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing statements.

(b) *Contents of statement.* The prehearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the administrative law judge, briefly set forth the following:

(1) Issues involved in the proceeding.

(2) Facts stipulated by the parties and a statement that the parties have made a good effort to stipulate to the greatest extent possible.

(3) Facts in dispute.

(4) Witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing.

(5) A brief statement of applicable law.

(6) Conclusions to be drawn.

(7) Estimated time required for presentation of the party's case.

(8) Such other information as may assist in the disposition of the proceeding.

§ 104.610 Prehearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues.

(2) Necessary amendments to the pleadings.

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents.

(4) Limitations on the number of witnesses.

(5) Negotiation, compromise, or settlement of issues.

(6) The exchange of proposed exhibits.

(7) Matters of which official notice will be requested.

(8) A schedule for the completion of actions discussed at the conference.

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the administrative law judge determines that this method is impracticable. The administrative law judge shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the administrative law judge, the conference will not be stenographically recorded. The administrative law judge will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

§ 104.620 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The administrative law judge, upon the motion of a party or upon his or her own motion, may request the Chief Administrative Law Judge to appoint another administrative law judge to conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the Chief Administrative Law Judge within specified time periods.

(b) *Duties of settlement judge.* (1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) The settlement judge shall report to the Chief Administrative Law Judge describing the status of the settlement negotiations, evaluating settlement prospects, and recommending the termination or continuation of the settlement negotiations.

(c) *Termination of settlement negotiations.* Settlement negotiations shall terminate upon the order of the Chief Administrative Law Judge issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the commencement of the hearing.

Subpart H—Hearing Procedures

§ 104.700 Date and place of hearing.

(a) *Date.* The hearing shall commence not later than 120 days following the issuance of the charge under § 103.405, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify HUD, the aggrieved persons on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

(b) *Place.* The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Notification of time and place for hearing.* The charge issued under § 103.405 will specify the time, date and place for the hearing. The administrative law judge may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

§ 104.710 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–559).

§ 104.720 Waiver of right to appear.

If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day that written evidence may be submitted for the record.

§ 104.730 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.

§ 104.740 In camera and protective orders.

The administrative law judge may limit discovery or the introduction of evidence, or issue such protective or other orders necessary to protect privileged communications. If the administrative law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order the preparation of a summary or extract of the original. The summary or abstract may be admitted as evidence in the record.

§ 104.750 Exhibits.

(a) *Identification.* All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

(b) *Exchange of exhibits.* One copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing.

§ 104.760 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be admitted, unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

§ 104.770 Stipulations.

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

§ 104.780 Record of hearing.

(a) *Hearing record.* All oral hearings shall be recorded and transcribed by a reporter designated by, and under the supervision of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record. Transcripts may be obtained by the parties and by the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days of the receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

§ 104.790 Arguments and briefs.

(a) *Arguments.* Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

(b) *Submission of written briefs.* The administrative law judge may permit the submission of written briefs following the adjournment of the oral hearing. Written briefs shall be simultaneously filed by all parties and shall be due not later than 30 days following the adjournment of the oral hearing.

§ 104.800 End of hearing.

(a) *Oral hearings.* Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(b) *Hearing on written record.* Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

§ 104.810 Receipt of evidence following hearing.

Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties. However, the administrative law judge shall include in the record any motions for attorney's fees (including supporting documentation), and any approved corrections to the transcripts.

Subpart I—Dismissals and Decisions

§ 104.900 Dismissal.

(a) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, the administrative law judge shall dismiss the administrative proceeding.

(b) *Effect of a civil action on administrative proceeding.* An administrative law judge may not continue an administrative proceeding under this part regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by an aggrieved person under an Act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement of a civil action for appropriate temporary or preliminary relief under section 810(e) or section 813(c)(1) of the Fair Housing Act does not affect administrative proceedings under this part.

§ 104.910 Initial decision of administrative law judge.

(a) *In general.* Within the time period set forth in paragraph (d) below, the administartive law judge shall issue an intial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the administrative law judge shall be based on the record of the proceeding.

(b) *Finding against respondent.* If the administrative law judge finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the administrative law judge shall issue an initial decision against the respondent and order such relief as may be appropriate. The relief may include, but is not limited to, the following:

(1) The administrative law judge may order the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).

(2) The administrative law judge may provide for injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge issued under § 104.405.

(3) To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent.

(i) The amount of the civil penalty may not exceed:

(A) $10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(B) $25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(C) $50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(ii) The time periods set forth in paragraph (b)(3)(i)(B) and (C) do not apply if the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged to have committed acts constituting a discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(iii) If the administrative law judge determines that more than one respondent has been engaged or is about the engage in a discriminatory housing practice, the administrative law judge may assess a civil penalty, up to the maximum permitted under paragraph (b)(3)(i) and (ii) of this section, against each respondent.

(c) *Finding in favor of respondent.* If the administrative law judge finds that a respondnet has not engaged, and is not about to engage, in a discriminatory housing practice, the administrative law judge shall make an initial decision dismissing the charge.

(d) *Date of issuance.* The administrative law judge shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the administrative law judge shall notify HUD, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for the delay.

§ 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the administrative law judge shall serve the initial decision on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, the Secretary of HUD and any intervenors. The initial decision will include a notice stating that the initial decision will become the final decision of the Department unless the Secretary issues a final decision under § 104.930 within 30 days of the date of issuance of the initial decision.

§ 104.925 Resolution of charge.

At any time before the issuance of a final decision under § 104.930, the parties may submit an agreement resolving the charge. The agreement must be signed by the General Counsel, the respondent, and all aggrieved persons upon whose behalf the charge was issued. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

§ 104.930 Final decision.

(a) *Issuance of final decision by Secretary.* The Secretary of HUD may review any finding of fact, conclusion of law, or order contained in the initial decision of the administrative law judge and issue a final decision in the proceeding. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings. The Secretary shall serve the final decision on all parties no later than 30 days from the date of issuance of the initial decision of the administrative law judge. The final decision shall be served on the respondent, the aggrieved person on whose behalf the charge was filed, the General Counsel, and any intervenors.

(b) *No final decision by Secretary.* If the Secretary of HUD does not serve a final decision within the time period described above, the initial decision of the administrative law judge will become the final decision of the Department. For the purposes of this part, such a final decision will be considered to have been issued 30 days following the date of issuance of the initial decision.

(c) *Public disclosure.* HUD shall make public disclosure of each final decision.

§ 104.935 Action upon issuance of a final decision.

(a) *Licensed or regulated businesses.* (1) If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the General Counsel will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and the final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the license of the respondent.

(2) The General Counsel shall notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 104.950 has been filed before the issuance of the notification of the agency. If such a petition has been filed, the General Counsel will provide the notification to the governmental agency within 30 days of the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the General Counsel will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) *Notification to the Attorney General.* If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel shall notify the Attorney General of the decisions by sending a copy of the final decisions in each administrative proceeding.

§ 104.940 Attorney's fees and costs.

Following the issuance of the final decision under § 104.930, any prevailing party, except HUD, may apply for attorney's fees and costs. The administrative law judge will issue an initial decision awarding or denying such costs. The initial decision will become the final decision of HUD unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party: (1) HUD shall be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD's regulations at 24 CFR Part 14; and (2) an intervenor shall be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent shall be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

§ 104.950 Judicial review of final decision.

(a) *Petition for review.* Any party adversely affected by a final decision under §104.930 may file a petition in the appropriate United States Court of Appeals for review of the decision under section 812(i) of the Fair Housing Act. The petition must be filed within 30 days of the date of issuance of the final decision.

(b) *No petition for review.* If no petition for review is filed under paragraph (a) within 45 days from the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement described under § 104.955(a) filed thereafter by the General Counsel, and in connection with any petition for enforcement described under § 104.955(b).

§ 104.955 Enforcement of final decision.

(a) *Enforcement by HUD.* Following the issuance of a final decision under § 104.930, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with section 812(j) of the Fair Housing Act.

(b) *Enforcement by others.* If before the expiration of 60 days from the date of issuance of the final decision under § 104.930, no petition for review of the final decision described under § 104.950 has been filed, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for the enforcement of the final decision in accordance with section 812(m) of the Fair Housing Act.

PART 105—FAIR HOUSING

6. The authority citation for Part 15 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

7. In §105.1, paragraph (a) would be revised, paragraph (b) would be redesignated as paragraph (d), and new paragraphs (b) and (c) would be added, to read as follows:

§ 105.1 Purposes.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610, as it existed before the amendment of the Act by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

(b)(1) This part applies to:

(i) Complaints filed before or after March 12, 1989 that involve alleged discriminatory housing practices that occurred before March 12, 1989 and are not alleged to have continued after March 12, 1989; and

(ii) Complaints filed before March 12, 1989 that involve alleged discriminatory housing practices that occurred before and continue after March 12, 1989, unless the complainant elects under § 105.81 to proceed under Part 103.

(2) Part 103 contains the procedures established by HUD for the investigation and conciliation of complaints under section 810 of the Act as amended by the Fair Housing Amendments Act of 1988. HUD's regulations governing proceedings before an administrative law judge adjudicating a charge issued under § 103.405 are contained in Part 104, and are not applicable to complaints processed under this Part 105.

(c) The procedures under this part for the investigation and conciliation of complaints will be conducted in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

* * * * *

8. Section 105.81 would be added to read as follows:

§ 105.81 Continuing violations.

If at any time during investigation or conciliation, the Department determines that a complaint involves an alleged discriminatory housing practice that continued after March 12, 1989, the Department shall notify the complainant and provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103, in lieu of the procedures under this part. The notice shall describe the procedures available to the complainant under each part and shall be made by certified mail. If such an election is made, HUD shall notify the respondent of the election, and process the complaint under Part 103.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER THE FAIR HOUSING ACT

9. The authority citation for Part 106 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 106.1 would be revised to read as follows:

§ 106.1 Purpose.

The purpose of this part is to establish procedures for public meetings or conferences that may be used to assist the Assistant Secretary in achieving the aims of the Fair Housing Act for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, sex, handicap, familial status, or national origin, and, specifically, to carry out those responsibilities delegated to him or her by the Secretary of Housing and Urban Development under sections 808(e)(1), (2), and (3), and 809 of the Fair Housing Act.

11. Section 106.2 would be revised to read as follows:

§ 106.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Meeting" means a public meeting or conference held under the authority of the Fair Housing Act and this part.

(c) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600–3620.

12. Part 109 would be revised to read as follows:

PART 109—FAIR HOUSING ADVERTISING

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600–3620) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, on account of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to "housing for older persons", as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing the dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor oganizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(g) "Handicap" means, with respect to a person—

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (12 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(h) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Assistant Secretary will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Assistant Secretary in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to comply with the provisions in this part, when found in connection with the investigation of a compaint alleging the making or use of discriminatory advertisements, will be a basis for making a determination of reasonable cause to believe that a violation of section 804 has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising and convey either overt or tacit discriminatory intent. Their use should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under the Fair Housing Act, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private

home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin.*

(1) *Race*—Negro, Black, Caucasin, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part shall restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*—crippled, blind, deaf, mentally ill, retraded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status*—adults, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in Part 100 of this title.

(8) *Catch words*—words such as restricted and exclusive should be avoided. Also, words and phrases used in a discriminatory context should be avoided, e.g., "private", "integrated", "traditional", "board approval" or "membership approval".

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its inclusion of minorities (signal to whites) should not be used. Specific directions which make reference to a racial or national origin significant area may indicate a preference and should not be used. References to a synagogue, congregation or parish may also indicate a religious preference and should not be used.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair Housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertisng of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the

coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing*—(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(2) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix). The notice can include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

Appendix I to Part 109—Fair Housing Advertising

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
½ page or larger	2 x 2
⅛ page up to ½ page	1 x 1
4 column inches to ⅛ page	½ x ½
Less than 4 column inches	(1)

[1] Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less that 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

PART 110—FAIR HOUSING POSTER

13. The authority citation for Part 110 would be revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Section 110.1 would be revised to read as follows:

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604–3606.

15. In § 110.5, paragraphs (b), (e), (g) and (h) would be revised to read as follows:

§ 110.5 Definitions.

* * * * *

(b) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805, 806, or 818 of the Act.

* * * * *

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

* * * * *

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804 through 806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600–3620.

* * * * *

16. In § 110.10, paragraph (a) introductory text and paragraph (c) would be revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

* * * * *

(c) All persons subject to section 805 of the Act, Discrimination In Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

* * * * *

17. Section 110.15 would be revised to read as follows:

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

18. In § 110.25, paragraph (a) would be revised to read as follows:

§ 110.25 Description of posters.

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity

We do business in accordance with the Fair Housing Act.

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.)

It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status or national origin

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410.

Toll free numbers for filing complaints are: 1-800-424-8590 1-800-543-8294 (TDD) or HUD Region or [Area Office stamp]

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19. Part 115 would be revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions; are substantially equivalent to those created by and under the act; and

(b) whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint;

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impractical to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so;

(v) Any concilation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making available or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service on account of race, color, religion, sex, familial status, or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages, or arrange to have adjudicated in court at agency expense the award of actual damages, to an aggrieved person;

(iv) Grant injunctive or other equitable relief;

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law must assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100 Subpart E.

(e) A determination of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account such relevant matters of State of local law, e.g., regulations, directives and rule of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragrpah, "decision making authority" shall include:

(1) Acceptance of the complaint;

(2) Approval of the concliliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in § 115.3(a)(2)(iv) or § 115.3(b)(1).

(g) Provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an

action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

(1) Award the plaintiff actual and puntitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) allow reasonable attorney's fees and costs.

115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, it must prohibit the following acts:

(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;

(2) Falsely representing that a dwelling is not available for inspection, sales, or rental based on discrimination because of handicap;

(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;

(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(ii) The selling, brokering, or appraising of residential real property;

(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;

(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occpancy after March 31, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on a accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in the bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C).

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

(1) Engage in comprehensive and thorough investigative activities; and

(2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in 24 CFR 111.104(a)(2), make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

(i) Investigation, including the preparation of a final investigation report containing—

(A) The names and dates of contacts with witnesses;

(B) A summary and dates of correspondence and other contacts with

the aggrieved person and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at: (1) The office of the Assistant Secretary, (2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and (3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The **Federal Register** notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the **Federal Register.**

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph (d), be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph (d) for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph (d) is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall

remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending.

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after the evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for allegedly discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past performance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the **Federal Register**.

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the **Federal Register**.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) In the case of a withdrawal of certification, on any person or

organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the Federal Register.

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this part, and by §§ 103.100 through 103.115 or 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the Federal Register.

20. PART 121, redesignated from Part 100, would be revised to read as follows:

PART 121—COLLECTION OF DATA

Sec.

121.1 Purpose.

121.2 Furnishing of data by program participants.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 121.1 Purpose

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable the Secretary to carry out his or her responsibilities under the authorities referred to in § 121.1. Specific requirements for furnishing such data are imposed under the individual program regulations contained under this Title 24.

Date: October 31, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–25506 Filed 11–4–88; 8:45]

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Monday, November 7, 1988

INFORMATION AND ASSISTANCE

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.115New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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Title	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.