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Presidential Documents

Title 3—

The President

Proclamation 5894 of November 2, 1988

50th Anniversary Year of the Federal Food, Drug, and Cosmetic Act, 1988

By the President of the United States of America

A Proclamation

Half a century ago, in 1938, the Federal Food, Drug, and Cosmetic Act was signed into law by President Franklin Delano Roosevelt. This legislation was the start of modern food and drug regulation. That this year is the 50th anniversary of that legislation reminds each of us to be grateful for our American legacy of concern for protecting the public health.

The 1938 Act covered cosmetics, medical devices, food additives, and pesticides, but made its strongest impact by giving the Food and Drug Administration the authority and responsibility for approving new drugs for safety before they could be sold. These drug review provisions came just at the beginning of the "first therapeutic revolution," when penicillin and sulfa drugs were being discovered. Wave after wave of new drug classes were discovered in the 1940's and 1950's, and the new drug review system enabled patients and physicians to have a level of confidence in medications that had never before existed.

To this day, the Food and Drug Administration uses the provisions of the 1938 Act, as amended over the years, to establish rigorous standards for food and drug safety that are widely respected and emulated.

The Congress, by House Joint Resolution 600, has recognized the 50th anniversary of the Federal Food, Drug, and Cosmetic Act and authorized and requested the President to issue a proclamation in observance of this anniversary.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1988 as the 50th Anniversary Year of the Federal Food, Drug, and Cosmetic Act, 1988. I call upon the people of the United States to observe this anniversary with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25902
Filed 11-4-88; 2:24 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5895 of November 2, 1988

Geography Awareness Week, 1988

By the President of the United States of America

A Proclamation

The United States of America is a unique and great land with a diverse ethnic population and an extraordinary international role. Geographical influences that have helped determine the discovery and development of this country, and global conditions that have given rise to wave after wave of immigration to our shores, make ours a history that cannot be understood without a ready knowledge of world geography. In order for our Nation to maintain its special heritage and retain its position of global economic and political leadership, it is essential that our citizens have a sound appreciation of basic geographical facts and principles.

Today, however, as recent studies—including a major report last summer from the National Geographic Society—have affirmed, many young people and adults lack knowledge of elementary geography. The situation among 18- to 24-year-olds is particularly disturbing, with these young Americans ranking last in basic knowledge in this multination report.

We can do better. A free society has no greater enemy than ignorance, and there is no greater waste than the underuse of a child's God-given ability to learn and explore. Fortunately, our Nation has begun to give new attention in the past decade to the need for educational reform and educational focus. Young people need to be challenged early and often; and subjects like geography, and closely related studies like history and civics, can be taught in ways that promote curiosity and help young people stretch their minds and engage their imaginations as they view the map and all the many frontiers and horizons it charts.

Truly we live in a world rich in wonder, variety, and mystery. During Geography Awareness Week, 1988, we can resolve to share more of these qualities with our children and to encourage them in their understanding of the social, economic, and political influence of geographic issues and conditions.

The Congress, by Public Law 100–391, has designated the period beginning November 13 and ending November 19, 1988, as "Geography Awareness Week" and has authorized and requested the President to issue a proclamation to recognize this observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 13 through November 19, 1988, as Geography Awareness Week. I urge educational institutions, parents, and all Americans to celebrate this observance with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

[FR Doc. 88-25903
Filed 11-4-88; 2:25 pm]
Billing code 3195-01-M

Ronald Reagan

Presidential Documents

Proclamation 5896 of November 3, 1988

National Jukebox Week, 1988

By the President of the United States of America

A Proclamation

For a century now, the jukebox has been a fixture of popular culture in our land. In restaurants, diners, and clubs across our country, jukeboxes have long provided patrons with music for dining and dancing. The jukebox is to many a symbol of good, clean fun. It is also an inexpensive source of entertainment for young and old alike, and a treasury of memories for listeners of every generation. The centennial of the jukebox now gives all of us an excellent opportunity to celebrate its enduring place in American life.

The Congress, by House Joint Resolution 446, has designated the week of October 30 through November 5, 1988, as "National Jukebox Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 30 through November 5, 1988, as National Jukebox Week. I call upon the American people to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25904
Filed 11-4-88; 2:26 pm]
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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

Recruitment, Selection, and Placement (General); Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Reemployment Priority List (RPL). The RPL is the mechanism agencies use to give reemployment consideration to employees separated by reduction in force, or recovered from a compensable injury after more than 1 year. These changes are intended to improve the operation of the RFL and clarify requirements.

EFFECTIVE DATE: December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Veterans' Preference Act of 1944 extended reemployment eligibility to preference eligibles furloughed or separated without delinquency or misconduct. This provision, now at 5 U.S.C. 3315, is the basis for the Reemployment Priority List (RPL) for employees separated by reduction in force (RIF). Coverage for employees who have fully recovered from a compensable injury after more than 1 year is based on 5 U.S.C. 8151(b)(2).

On January 7, 1988, OPM published proposed revisions to the RPL regulations in the **Federal Register** (53 FR 408). We received 13 written comments from Federal agencies and employee organizations. The key comments and changes are summarized below. In addition, several editorial changes were made.

a. Proposed § 330.201 would permit an agency to operate an alternative placement program as an exception to the RPL requirement. In the final regulation, we have clarified that OPM prior approval is necessary for such an exception. Also, we have changed the definition of "agency" to mean "Executive agency," which is used for reduction-in-force coverage in 5 U.S.C. 3501 and is defined in 5 U.S.C. 105. This allows all the Department of Defense agencies to use a single RPL.

b. Proposed § 330.202(a)(1) would require an individual to file an application for the RPL within 30 days after the RIF separation date and would require an agency to enroll the individual on the RPL within 10 days thereafter. One commenter suggested we drop the requirement for an application because employees often don't know the jobs for which they are qualified.

We have not adopted this suggestion because we believe the use of an employee-completed application is more advantageous and efficient than the existing system. We plan, however, to advise agencies to give employees guidance in completing an application. Although several commenters suggested less specific deadlines, we have retained the proposed 30-day and 10-day limits as easier to administer.

Three commenters opposed the provision in § 330.202(a)(1) that would permit employees to receive consideration for positions with work schedules different from the schedule worked at the time of separation. Although the proposal was intended to provide broader placement consideration, the commenters felt it extended placement rights inconsistent with that available under RIF procedures and also limited management flexibility. In consideration of these concerns, we have given agencies discretion in the final regulations to adopt provisions permitting employees to request consideration for positions having different work schedules.

c. Proposed § 330.203(a) covered eligibility based on RIF separation. A new provision would deny RPL eligibility if an employee's last rating of record for RIF purposes was unacceptable. Six commenters suggested that, instead, individuals be required to have a rating of at least fully successful. Two commenters suggested that the performance rating requirement be dropped altogether. For the following reasons, we have decided to retain the requirement as proposed.

Performance requirements have been incorporated into a number of other programs—pay, within grade increases, merit promotion. More specifically, the RIF regulations deny displacement rights to any employee whose current rating is unacceptable. A RIF and subsequent RPL eligibility are so closely linked that it would be inconsistent to ignore an unacceptable rating and grant reemployment priority *after* an employee's separation when placement rights *before* separation were denied because of that unacceptable rating. Similarly, it would be inconsistent to negate reemployment eligibility of an employee whose rating is minimally successful when the RIF regulations do not refuse displacement rights because of that rating. Furthermore, we believe the proposed requirement represents a balanced approach to achieving harmony between the reemployment and performance management laws.

Because some employees, such as administrative law judges, are exempt from performance evaluations, we have revised § 330.203(a) to exclude them from the rating requirement.

Another commenter suggested that we continue RPL enrollment of employees who decline to transfer with their function to another commuting area. RPL eligibility has been limited to employees who receive a RIF separation notice. Therefore, when employees involved in a transfer of function are separated by RIF in accordance with 5 CFR Part 351, they may be eligible for the RPL. In addition, all employees who are separated for declining to transfer with their function may receive placement assistance through the Displaced Employee Program, which is described in 5 CFR Part 330, Subpart C.

d. Proposed § 330.203(c) continued the existing policy of 2-year enrollment for tenure group I employees and 1-year enrollment for tenure group II employees. Three commenters suggested that enrollment be limited to 1 year for all employees. We have retained the existing policy as more supportive of placement efforts.

One commenter suggested that RPL enrollment should end when an individual declines an offer under

conditions shown as acceptable in his or her application. The proposed regulations already provide a new, related provision—an individual loses consideration for all grade levels at and below the grade of an offer he or she declines. If this grade is the same as the last grade held, the individual's RPL enrollment is ended.

e. Proposed § 330.204 covered eligibility based on compensable injury. One commenter suggested that these provisions should be equivalent to those covering RIF separations. We had done this in the proposed regulations to the extent possible without violating the injury compensation law. Thus, no change was made in the final regulation.

f. Proposed § 330.205 would restrict an agency from making certain types of appointments while a qualified RPL enrollee is available. As suggested, we have made several changes.

One change is to permit the *transfer* of preference eligibles, just as their reinstatement eligibility is not blocked by the RPL, on the basis that it is illogical to permit a preference eligible to receive the one type of appointment and not the other. Another change gives agencies the discretion to exempt 30-day special needs appointments and 700-hour temporary appointments of handicapped persons. These exceptions are intended to assure that the RPL does not prevent an agency from meeting its obligations under other programs or from acting quickly in an emergency. Last, we have clarified that statutory or regulatory reemployment rights, such as those in 5 CFR Part 352, are not blocked by the RPL.

One commenter suggested that § 330.205 be revised to specify when an agency must clear the RPL before proceeding with an outside appointment. We concur with this suggestion.

This issue is particularly important because the RPL restrictions apply to *all* components of an agency within the commuting area, not just the component conducting the RIF. Thus, one component may make a job offer just before another component issues RIF notices. By the time the appointee enters on duty, eligibles from the other component have been enrolled on the RPL. It is not good business for the Government to make a firm job offer to someone who accepts and makes plans to change jobs, sometimes involving a geographic move, only to have the Government rescind the job offer because in the meantime someone has been enrolled on the RPL. To avoid such awkward situations, we have revised § 330.205 to provide that the RPL must be cleared at the time an agency makes a firm offer of employment.

g. Proposed § 330.206(a) would limit higher grade job consideration to RPL enrollees who had previously held a higher grade. Four commenters opposed this provision on the basis that priority consideration should not extend beyond the grade from which separated. Our primary intent was to cover employees who had been downgraded in one RIF prior to the second RIF in which they were separated and became eligible for the RPL. Since, in this case, both the downgrade and separation are RIF actions, we believe it's fair to give these individuals job consideration up to the highest grade from which demoted by RIF. We have changed the final regulation to reflect this.

h. Proposed § 330.206(b) provided that an individual recovered from a compensable injury is entitled to priority consideration elsewhere in the agency if not placed in the former commuting area. Three commenters requested clarification. The final regulation indicates that the manner of priority consideration given outside the commuting area is left to the discretion of the former agency. This provision is not intended, however, to extend priority consideration beyond the time limits given in the regulation. Additional guidance will be provided through the Federal Personnel Manual.

i. Proposed § 330.207 provided two options agencies could use in making selections from the RPL. Both options would extend veterans preference. Although three commenters suggested that veterans preference be dropped, we have not done so because 5 U.S.C. 3315 requires it.

One option provided for rating and ranking eligibles. Based on the suggestion of one commenter, we have revised the final regulation to require that job-related evaluation procedures be used to rate eligibles and be applied fairly and consistently. Another commenter suggested that selection be permitted from among the ten highest rated eligibles. We cannot adopt this suggestion because the pertinent provision in the Veterans' Preference Act refers to the selection order for competitive examinations, which by statute follows a rule of three.

One commenter suggested that reemployment should be in strict reverse-RIF order, taking into account length of service. We have not adopted this procedure because the law does not require it and its use would remove all managerial discretion in making selections from the RPL.

j. Proposed § 330.208 contained a revised qualification standard that is the same as that used in any normal placement action. We had dropped the existing requirement that, to be basically qualified, an individual must be able to perform without undue interruption and loss of productivity.

Three commenters opposed this change on the basis that an "undue interruption" standard is appropriate for priority placement. We have not changed the proposed standard because we believe it is appropriate for filling vacancies. Furthermore, both the proposed and final § 330.207(d) permits an agency to make an exception to the RPL selection order when duties cannot be taken over without undue interruption by a qualified individual on the RPL or one who has higher standing than the one selected.

k. Proposed § 330.209 contained a revised standard for filing appeals with the Merit Systems Protection Board. One editorial change was suggested, which we have made.

Effective Date

These regulations must be followed for all RPL enrollments occurring on or after the effective date of these regulations. For employees enrolled before the effective date, the RPL must be operated under the regulations in effect at the time of enrollment.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 330 and 351

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Parts 330 and 351 of Title 5, CFR, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for Part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

2. Subpart B and its heading are revised to read as follows:

Subpart B—Reemployment Priority List (RPL)

Sec.

Subpart B—Reemployment Priority List (RPL)

§ 330.201 Establishment and maintenance of RPL.

(a) Each agency is required to establish and maintain a reemployment priority list (RPL) for each commuting area in which it separates eligible employees due to reduction in force or compensable injury, except as provided in paragraph (b) of this section. For purposes of this subpart, "agency" means "Executive agency" as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL.

(b) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OFM concurrence that the program satisfies the basic requirements of this subpart.

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 of this part must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours of work per week, in addition to positions at the same representative rate and work schedule as the position from which the employee was or will be separated. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL.

(2) An eligible employee under § 330.204 must request reemployment within 30 calendar days after the date compensation ceases, except that when an appeal for continuation of compensation is filed, the 30-day period begins the day after resolution is reached. No specific format is required.

(b) An agency must enroll an individual on the RPL no later than 10 calendar days after receipt of an application or request.

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

(1) Be serving under an appointment in the competitive service in tenure group I or II;

(2) Have received a rating above unacceptable (level 1) as the last annual performance rating of record for Part 351 purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or OPM administrative action);

(3) Have received a specific notice of separation under Part 351 of this chapter; and

(4) Have not declined an offer under Subpart G of Part 351 of this chapter of a position with a representative rate at least as high as that of the position from which the employee was or will be separated.

(b) At the time it gives a specific RIF notice of separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL. An individual loses RPL consideration for all positions with a respesentative rate at and below that of any position for which the individual has declined an offer of career, career-conditional, or excepted appointment without time limit of failed to reply to an inquiry, under this subpart, when the position meets the acceptable conditions shown in his or her application. Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(3) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, concerning a specific position having a representative rate at least as high, and with the same work schedule, as that of the position from which the person was or will be separated; or

(4) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

§ 330.204 Eligibility due to compensable injury.

(a) A former competitive service employee in tenure group I or II separated because of a compensable injury or disability (as defined in Part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL. Part 353 of this chapter contains information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the individual is entered on the RPL. An individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency; or

(3) Declines an offer or fails to respond to an inquiry about a specific position that is equivalent to the position from which separated.

§ 330.205 Employment restrictions.

(a) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under Part 353 of this chapter, or is exercising other statutory or regulatory reemployment rights.

(b) Paragraph (a) of this section does not apply to actions involving employees on an agency's rolls, as authorized in chapter 330 of the Federal Personnel Manual, or when all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an inquiry about the position. Furthermore, an agency may, at its discretion, adopt provisions that permit 30-day special needs appointments and 700-hour temporary appointments of handicapped individuals.

(c) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d) of this part.

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 of this part is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent) and have no greater promotion potential than the position from which the employee was or will be separated. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under Part 351 of this chapter.

(2) An employee is considered for positions having the same work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

(3) An eligible employee may be entered on the RPL only for the commuting area in which separated and may not apply for the RPL in any other location, except as provided in paragraph (a)(4) of this section.

(4) Each eligible employee in a position in Alaska or overseas is entitled to apply for the RPL for the commuting area in which separated, unless:

(i) The employee leaves that area and makes a written request for entry on the RPL for the commuting area from which he or she was employed for Alaskan or overseas service, or in another area within the United States outside of Alaska that is mutually acceptable to the individual and the agency; or

(ii) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas service or residence, combined with prospective overseas service under available appointments, would exceed the maximum duration of an overseas duty tour in the agency rotation program. In this case, the employee may apply for one other commuting area within the United States that is mututally acceptable to the individual and the agency.

(b) An eligible employee under § 330.204 of this part is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at a time and in a manner determined appropriate by the agency.

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL but need not adopt the same method for each RPL. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL on or after this section becomes effective.

(b) *Retention standing order.* Qualified individuals shall be placed in group and subgroup order in accordance with Part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, it may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing.

(c) *Rating and ranking.* (1) An agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(2) Individuals with an eligible numerical score shall be ranked in the following order:

(i) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional position at and above the GS–9 level, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of all other eligibles, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as an exception under paragraph (d) of this section.

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL only when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets the qualification standard and requirements for the position, including any minimum educational requirements, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(b) An agency may make an exception to the qualification standard if:

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

§ 330.209 Appeals.

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

PART 351—REDUCTION IN FORCE

3. The authority citation for Part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

Subpart J—[Removed]

4. In Part 351, Subpart J, consisting of §§ 351.1001–351.1005, is removed.

[FR Doc. 88–25830 Filed 11–7–88; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program; Former Spouses of CIA and Foreign Service Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to implement section 303 of the Intelligence Authorization Act for Fiscal Year 1987, Pub. L. 99–569, section 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. 100–204, and section 204 of the Federal Employees' Retirement System—Technical Corrections Act, Pub. L. 100–238. The regulation describes the conditions under which certain former spouses of Central Intelligence Agency (CIA) and Foreign Service employees or former employees previously omitted from spouse equity legislation may enroll in the Federal Employees Health Benefits (FEHB) Program. The regulation also clarifies the prohibition on dual enrollment for FEHB enrollees.

DATES: Sections 890.301, 890.302, and 890.303 effective January 9, 1989. All other sections effective October 1, 1986, for former spouses of Central Intelligence Agency employees; December 22, 1987, for former spouses of Foreign Service employees. Comments must be received on or before January 9, 1989.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On October 27, 1986, Congress enacted the Intelligence Authorization Act for Fiscal Year 1987, Pub. L. 99–569. Section 303 of the act amended the Central Intelligence Agency Act of 1949 to provide FEHB coverage to former spouses of CIA employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse: (1) Was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the period of CIA service, at least five years of which both the employee and the former spouse spent outside the United States; and, (3) has not remarried prior to age 55.

Subsequently, on December 22, 1987, Congress enacted the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. 100–204, which provided similar benefits to former spouses of Foreign Service employees. Section 188 of the act amended Subchapter I of Chapter 8 of the Foreign Service Act of 1980 to provide FEHB coverage to former spouses of Foreign Service employees or former employees whose marriage was dissolved before May 7, 1985, if the former spouse: (1) Was covered by an FEHB plan as a family member any time during the 18-month period before the dissolution of marriage; (2) was married to the employee for not less than ten years during the employee's government service; and (3) has not remarried prior to age 55. Section 204 of Pub. L. 100–238, the Federal Employees' Retirement System—Technical Corrections Act, effective April 7, 1988, extended the time limit for applying for FEHB coverage from June 22, 1988 (established under Pub. L. 100–204), to October 7, 1988.

These sections of law apply to former spouses of CIA and Foreign Service employees and former employees who are or were under the Central Intelligence Agency Retirement and Disability System (CIARDS) or the Foreign Service Retirement and Disability System (FSRDS), the Civil Service Retirement System (CSRS), or the Federal Employees Retirement System (FERS). The former spouse may apply for FEHB coverage even if the employee no longer works for the CIA or the Foreign Service and even if such former employee has received a refund for all of his or her retirement contributions. Further, former spouses under these two sections of law are entitled to benefits even though they have no present or future entitlement to a survivor annuity or portion of a retirement annuity.

Under section 303 of Pub. L. 99–569, a qualified former spouse must have filed an application for health benefits coverage and must have arranged to pay both the employee and agency share of the health benefits premium into the FEHB Fund by April 1, 1987. Although this date has passed, the law gives the Director of Central Intelligence the authority to direct OPM to waive the application time limitation in individual cases where circumstances warrant. Therefore, OPM will waive the six-month limitation on filing upon notification to do so by the Director of Central Intelligence.

Former spouses entitled to FEHB coverage under section 188 of Pub. L. 100–204 and section 204 of Pub. L. 100–238 must file an application for health benefits coverage and must arrange to pay both the employee and agency share of the health benefits premium into the FEHB Fund by October 7, 1988. The law gives the Secretary of State the authority to waive the application time limitation in individual cases where circumstances warrant. Accordingly, OPM will accept a waiver of the filing date when notified of the waiver by the Department of State.

In addition to the above provisions, Pub. Laws 99–569, 100–204 and 100–238 all contain a prohibition on dual enrollment of former spouses which complements the dual enrollment prohibition contained in the FEHB Act. Thus, we have included former spouses in the existing FEHB Program regulatory provision prohibiting dual enrollments at 5 CFR 890.302(a), and we have taken this opportunity to make other clarifying changes to the dual enrollment provision.

Some technical material has been added to the regulations in response to questions raised by a number of Federal agencies concerning the status of health benefits coverage when a former spouse is entitled to FEHB coverage as an employee. A former spouse who at the time he or she becomes a former spouse is, or later becomes, a Federal employee entitled to FEHB coverage may elect to defer the health benefits enrollment as a former spouse and carry the enrollment as an employee. When employment terminates, the individual may enroll or resume health benefits enrollment as a former spouse, providing he or she continues to meet the requirements for health coverage as a former spouse.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the entitlements conferred by Public Laws 99–569 and 100–204 addressed in this regulation were effective beginning October 1, 1986, and December 22, 1987, respectively.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend FEHB coverage to a small group of qualified former spouses of CIA and Foreign Service employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Section 890.102 also issued under 5 U.S.C. 1104; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. In § 890.101, new paragraphs (5) and (6) are added to the definition of "employing office" to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

"Employing office"

* * * * *

(5) For a former spouse of an employee or former employee of the Central Intelligence Agency (CIA) whose marriage was dissolved before May 7, 1985, and who meets the requirements under § 890.803(a)(3)(iv), the employing office is the CIA.

(6) For a former spouse of an employee or former employee of the Foreign Service whose marriage was dissolved before May 7, 1985, and who meets the requirements under § 890.803(a)(3)(v) of this part, the employing office is the Department of State.

* * * * *

3. In § 890.301, the first two sentences of paragraph (g)(4) are revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollments.

* * * * *

(g) * * *

(4) An employee, annuitant, or former spouse who has established eligibility for health benefits under § 890.803 of this part, who is not enrolled but is covered by the enrollment of another enrollee under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment. If the individual is not eligible to enroll in the plan from which coverage is lost, he or she may enroll in the same option of any available plan. * * *

* * * * *

4. In § 890.302, paragraph (a) is revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) The enrollment of an employee, annuitant, or former spouse who enrolls for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraphs (a)(2), (3), and (4) of this section, no employee, annuitant, child, or former spouse may enroll or be enrolled if he or she is covered under another person's self and family enrollment in the FEHB Program.

(2) *Dual enrollment—spouse.* To protect the interests of the children, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though his or her spouse also has a self and family enrollment. Generally, such dual enrollments are permitted only where two employees or annuitants either are married, each with children from prior marriages who do not live with them, or are separated, with each spouse retaining custody of his or her own children by a prior marriage. Because no person is entitled to receive benefits under more than one enrollment, each enrollee must notify his or her insurance carrier of the names of the spouse and children to be covered under his or her enrollment that are not named under the other enrollment.

(3) *Dual enrollment—child.* (i) When natural parents are divorced and children are included as family members under the enrollment of both natural parents or of a natural parent and a step-parent, the children are entitled to receive benefits under only one enrollment. Each enrollee must notify his or her insurance carrier of the name(s) of the child(ren) to be covered under his or her enrollment that are not named under the other enrollment.

(ii) When an employee who is under age 22 and covered under a parent's self and family enrollment becomes the parent of a child, the employee may elect to enroll for self and family coverage. Because the employee is entitled to receive benefits under only one enrollment, each enrollee must notify his or her insurance carrier of the names of the persons to be covered under his or her enrollment that are not named under the other enrollment.

(4) *Dual enrollment—spouse and child.* Where a situation such as that in paragraph (a)(2) of this section occurs (that is, two employees or annuitants are married, but each has children from prior marriages who do not live with them) and there are also children who are the issue of the marriage, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though his or her spouse also has a self and family enrollment. Because no person is entitled to receive benefits under more than one enrollment, each enrollee must notify his or her insurance carrier of the names of the family members to be covered under his or her enrollment that are not covered under the other enrollment.

* * * * *

5. In § 890.303, paragraph (f) is reserved and a new paragraph (g) is added to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(f) [Reserved]

(g) An individual entitled to health benefits as a former spouse who also has or becomes entitled to health benefits coverage as a Federal employee may suspend or defer coverage as a former spouse and carry the health benefits coverage as an employee. The former spouse must have established entitlement to the health benefits coverage under § 890.803 of this part and filed all required documents with the employing office responsible for maintaining the former spouse enrollment within the time limits specified in § 890.805 of this part. The employing office shall note in the file that the former spouse health benefits enrollment is being suspended or deferred until such time as coverage as a Federal employee terminates. Upon termination of the Federal employment, the individual is entitled to enroll or resume the enrollment as a former spouse, provided he or she remains qualified as such. A former spouse-employee who loses FEHB coverage because of termination of enrollment must enroll or resume enrollment as a former spouse in the same plan and option unless one of more of the conditions in § 890.301 of this part apply.

6. In § 890.803, paragraph (a)(1) is revised, the word "or" is added to the end of paragraph (a)(3)(iii), new paragraphs (a)(3)(iv) and (v) are added,

and paragraph (b) is revised to read as follows:

§ 890.803 Who may enroll.

(a) * * *

(1) The former spouse whose marriage to an employee, employee annuitant, or a former Central Intelligence Agency (CIA) or Foreign Service employee is dissolved has not remarried before age 55; and

* * * * *

(3) * * *

(iv) The former spouse was married to an employee or former employee of the Central Intelligence Agency (CIA) for at least 10 years during the employee's CIA service, at least 5 years of which both the employee and the former spouse spent outside the United States, and the marriage was dissolved before May 7, 1985; *or*,

(v) The former spouse was married to an employee or former employee of the Foreign Service for at least 10 years during the employee's government service, and the marriage was dissolved before May 7, 1985.

(b) Except as contained in paragraphs (a)(3) (iv) and (v) of this section, a former spouse of an employee who separates from Federal service before becoming eligible for immediate annuity is eligible to enroll only if the former spouse's marriage to the employee was dissolved before the employee left Federal service.

* * * * *

7. The introductory text to § 890.805 is revised, the word "or" before paragraph 890.805(c)(2) is removed, and new paragraphs 890.805(c)(3), (d) and (e) are added to read as follows:

§ 890.805 Application time limitations.

Except for former spouses meeting the requirements in § 890.803(a)(3) (iv) and (v) of this part, former spouses must apply for health benefits coverage by the latest of—

* * * * *

(c) * * *; or (3) within 60 days after the date of the notice of entitlement to a former spouse annuity under another retirement system for Government employees.

(d) Former spouses who meet the requirements in § 890.803(a)(3)(iv) of this part must apply for health benefits coverage by April 1, 1987. Where circumstances warrant, the former spouse may request that the filing date be waived. The authority of the Director of Central Intelligence to direct OPM to waive the filing date has been delegated to CIA's Office of Personnel. Requests for waiver should be addressed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. OPM will waive the April 1, 1987, filing date upon notification to do so from the Director of Central Intelligence.

(e) Former spouses who meet the requirements in § 890.803(a)(3)(v) of this part must apply for health benefits coverage by October 7, 1988. Where circumstances warrant, the former spouse may request the Secretary of State to waive the filing date. The authority of the Secretary of State to waive the filing date has been delegated to the Department of State's Retirement Division. Requests for waiver should be addressed to the Department of State, Retirement Division, Washington, DC 20520. OPM will accept the waiver upon notification to do so from the Department of State.

8. The introductory text to § 890.807(a)(1) is revised, paragraphs (b) and (c) are designated as (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 890.807 Termination of enrollment.

(a)(1) Except for former spouses meeting the requirements in § 890.803(a)(3) (iv) and (v) of this part, a former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs: * * *

(b) The enrollment of a former spouse who meets the requirements in § 890.803(a)(3) (iv) or (v) of this part terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(1) Former spouse remarries before age 55.

(2) Former spouse dies.

* * * * *

9. Section 890.808 is amended by adding a second sentence to paragraph (a), by revising paragraph (b)(1), and by adding a sentence to the end of paragraph (b)(2) to read as follows:

§ 890.808 Employing office responsibilities.

(a) * * * Former spouses applying for benefits under § 890.803(a)(3)(iv) of this part must also include with their application a request for waiver of the application time limitation in accordance with § 890.805(d) of this part. Former spouses applying for benefits under § 890.803(a)(3)(v) of this part must also include with their application a request for waiver of the application time limitation in accordance with § 890.805(e) of this part.

(b) *Administration of the enrollment process.* (1) The employing office will set up a method for accepting applications for enrollment informing the former spouse what documents to submit and where to submit them for an eligibility determination, and collecting premium payments. The method will include procedures for verifying the eligibility requirements under § 890.803(a) (1) and (2) of this part. The employing office must obtain OPM, Foreign Service Retirement and Disability System (FSRDS), or CIA Retirement and Disability System (CIARDS) documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i), (ii), (iii), (iv), or (v) of this part. A request for the retirement system's determination whether a court order is a qualifying court order for health benefits enrollment under this subpart must be accompanied by the documents specified in § 831.1705 (b) and (c) of this chapter.

(2) * * * Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(iv) of this part must be directed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(v) of this part must be directed to the Department of State, Retirement Division, Washington, DC 20520.

* * * * *

[FR Doc. 88-25831 Filed 11-7-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-180]

Interstate Movement of Citrus Fruit From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending the citrus canker regulations to allow inspectors to issue certificates for the interstate movement of regulated fruit from Florida, even if all nurseries in Florida are not inspected, provided the State of Florida prohibits the movement of regulated articles from any nursery that

is not inspected. This action is necessary because some nurserymen refuse to allow inspections of their nurseries. Without amending the regulations, we would have to suspend the issuance of certificates for the interstate movement of regulated fruit. A state-imposed prohibition on the movement of regulated articles from nurseries not inspected would continue to provide protection against the interstate spread of citrus canker.

DATES: Interim rule effective November 2, 1988. We will consider written comments postmarked or received on or before November 21, 1988.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket 88-180. Comments received may be inspected at USDA, 14th and Independence Ave., SW., Room 1141 South Bldg., Between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Bldg., 6505 Belcrest Rd., Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

The citrus canker regulations, contained in 7 CFR 301.75, prohibit or restrict the interest movement of certain articles to prevent the interstate spread of citrus canker. Section 301.75-7(b) sets forth the requirements that must be met before an inspector will issue a certificate for the interstate movement of regulated fruit. With a certificate, regulated fruit may be moved interstate from Florida to all areas of the United States, including commercial citrus-producing areas. One of the requirements in § 301.75-7(b) is that all nurseries in Florida that contain regulated plants must be inspected for citrus canker approximately every 30 days. All regulated plants in the nurseries must be examined.

We require these nursery inspections because they are the best single means of detecting citrus canker and of ensuring that citrus canker is not introduced into a grove producing fruit for interstate movement.

We have learned that a few nurserymen have refused to allow inspections of their nurseries. If all nurseries in Florida that contain regulated plants are not inspected approximately every 30 days, our current regulations leave us no choice but to suspend the issuance of certificates for the interstate movement of regulated fruit. Rather than allow this to happen because of noncompliance by a few nurseries, we are amending the regulations to allow us to continue to issue certificates, even if all nurseries in Florida are not inspected, provided the State of Florida prohibits the movement of regulated articles from any nursery not inspected. The prohibition on the movement of regulated articles from that nursery would continue until every regulated plant in the nursery has been examined by an inspector on three inspections conducted approximately 30 days apart.

A state-imposed prohibition on the movement of regulated articles from nurseries not inspected as required would ensure that regulated fruit moved interestate with a certificate continues to present negligible risk of spreading citrus canker.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this rule without prior opportunity for public comment. Immediate action is necessary so that regulated fruit can continue to be moved interstate from Florida to commercial citrus-producing areas of the United States, with only a negligible risk of spreading citrus canker, despite some nurserymen refusing to allow inspection of their nurseries as required by the regulations. Suspending the issuance of certificates for the interstate movement of regulated fruit, perhaps indefinitely, would cause serious economic losses to those persons affected.

Because prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, we find good cause under 5 U.S.C. 553 for making this rule effective upon signature. We will consider comments postmarked or received on or before November 21, 1988. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Only a few nurseries out of thousands in Florida have refused to allow inspection as required by the regulations. Only these nurseries will be affected by this rule, and then only until they have been inspected as required.

Without this rule, all interstate movement of regulated fruit from Florida to commercial citrus-producing areas would have been suspended.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75-7, paragraph (b)(6) is amended by revising the second

sentence and adding a third sentence to read as follows:

§ 301.75-7 Issuance and cancellation of certificates and limited permits.

* * * * *

(b) * * *

(6) * * * In addition, all nurseries in Florida that contain regulated plants must have every regulated plant in the nursery examined by an inspector approximately every 30 days. If any nursery is not inspected as required by this paragraph, issuance of certificates for the interstate movement of regulated fruit may continue only if the State of Florida prohibits the movement of regulated articles from that nursery until every regulated plant in the nursery has been examined by an inspector on three inspections conducted approximately 30 days apart.

* * * * *

Done at Washington, DC, this 2nd day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25833 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 780

Appeal Regulations

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with minor changes for clarity, the proposed rule published in the **Federal Register** on May 13, 1988 (53 FR 17054). This rule amends 7 CFR Part 780, Appeal Regulations, to: (1) Delete obsolete references; (2) clarify the administrative appeal procedure set forth in this Part; (3) delete restrictions with respect to the reviewability of certain State Agricultural Stabilization and Conservation ("ASC") Committee determinations; (4) specify the persons to whom these regulations apply; and (5) state that these regulations are applicable to only individual determinations made with respect to specific persons. These amendments will provide greater clarity regarding the manner in which this administrative appeal procedure is conducted.

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Burchett, Acting Director, Appeals Staff, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC Telephone: (202) 447-5533.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** on May 13, 1988 (53 FR 93) to: (1) Delete obsolete references; (2) clarify the administrative appeal procedure set forth in this Part; (3) delete restrictions with respect to the reviewability of certain State Agricultural Stabilization and Conservation ("ASC") Committee determinations; (4) specify the persons to whom these regulations apply; and (5) state that these regulations are applicable to only individual determinations made with respect to specific persons.

The public was given 30 days to submit written comments on the proposed rule published in the **Federal Register** on May 13, 1988 (53 FR 17054). The Department received one (1) timely filed comment.

Background

Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)), provides for the establishment of "local and State committees" to be used in carrying out the provisions of the act. These local committees are commonly referred to as county committees. County and State committees have been used extensively in the past to implement various other programs that are conducted by CCC and the Department of Agriculture, including the price support and production adjustment programs of the CCC. The method for selecting these committees and their general duties are set forth at 7 CFR Part 7.

A major function of county and State committees is to serve as a reviewing authority with respect to the implementation and administration of the various conservation, price support, and production adjustment programs. Included in this function is the participation of county and State committees in the administrative appeal process that is made available to persons who believe that an erroneous determination concerning their participation in such a program has been made. The administrative appeal process is set forth at 7 CFR Part 780. These regulations provide that if a person is dissatisfied with the initial determination by either the county or State committee or the Deputy Administrator, State and County Operations (the "Deputy Administrator"), Agricultural Stabilization and Conservation Service ("ASCS") that such person may request that the determination be reconsidered by the authority which issued the initial determination. If the person is dissatisfied with this subsequent determination, an appeal may be filed with the next highest reviewing authority, with the final level of appeal being to the Deputy Administrator. Throughout this appeal procedure the person pursuing the appeal may request that an informal hearing be held. If such a hearing is deemed to be appropriate, the county or State committee or the Deputy Administrator will convene a hearing in which the appellant is provided the opportunity to present relevant facts and evidence.

The proposed rule would also make several amendments to 7 CFR Part 780 for clarity and to delete obsolete references. In addition, the proposed rule would provide that any person who is not a program participant but receives

a payment or other benefit that is made under a program administered by the county or State committee or the Deputy Administrator, such as an assignee, is subject to these regulations. The proposed rule would also make editorial changes to all sections of 7 CFR Part 780. The following is a summary of the major amendments which would be made by the proposed rule.

Section 780.1 would be amended to delete references to obsolete programs and provide that these regulations would be applicable to all programs that are administered by county and State committees and the Deputy Administrator, except as otherwise may be provided in individual program requirements. This section would also be amended to state that this part is applicable to: (1) Persons denied participation in appliable programs, (2) persons participating in such programs; and (3) persons who are not participating in such programs but who rececive payments or other benefits under one of these programs. Finally, this section would be amended to state more clearly that this administrative appeal procedure is available only with respect to individual determinations involving a person meeting the previously stated criteria. Appeals are not available with respect to general program requirements that apply to all program participants. For example, appeals are not available concerning the level at which loans and purchases are established or the type of conservation uses that are suitable for use on acreage that is required to be removed from production in order for a person to be eligible for program benefits.

Section 780.2 would be amended to conform to the amendments to Section 780.1 concerning persons who receive programs payments or other benefits and to remove unnecessary definitions.

Section 780.11 currently provides that nine specified determinations which are made by a State committee are not appealable to the Deputy Administrator. The proposed rule deleted this limitation but provided that certifications by a technician of the Soil Conservation Service or the Forest Service or determinations, of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority. The proposed rule also provides that State committee determinations with respect to program payment yields or crop acreage bases are not appealable to the Deputy Administrator. Producers have been permitted to appeal State committee determinations with respect to bases and yields to the Deputy Administrator since the enactment of the Act. The proposed rule would amend § 780.11 to provide that appeals involving program payment yields and crop acreage bases could not be appealed to the Deputy Administrator.

A comment was received from a Congressional delegation. The Congressional delegation objected to the revision of § 780.11 under the proposed rule that a State committee determination with respect to program payment yields is not appealable. The comment stated that allowing yield determinations to be finalized at the State level based on National rules and procedures without allowing the producer to present an appeal before the person(s) responsible for the issuance of regulations did not conform to the intent of Congress in establishing the ASC farmer-elected committees. The comment stated that the proposed rule might be acceptable if State committees were granted authority to interpret the regulations applicable to the establishment of program payment yields.

Producers have been permitted to appeal State committee determinations with respect to yields to the Deputy Administrator since the enactment of the Food Security Act of 1985 (the Act). During the 12-month period ending in April 1987 approximately 425 appeals concerning program payment yields or crop acreage bases were filed with the Deputy Administrator. The vast majority of the appeals addressed the substance of provisions of the Act or the regulations issued pursuant to the Act and did not concern the manner in which the regulations were applied. To ensure compliance with the Act and consistency in farm program administration, the responsibility for interpretation of the statute and regulations cannot be delegated to a lower authority. However, § 780.12 provides that nothing in these regulations in this part precludes the Administrator, ASCS, or a designee from determining at any time any question arising under the programs to which this part applies or from reversing or modifying any determination made by a State or county committee. This provision provides ample flexibility for the review by the Deputy Administrator of an appeal involving a determination which has been made with respect to a farm program payment yield or crop acreage base if the facts in an individual case warrant such action.

After considering the comments received, it has been determined that the provisions of the proposed rule as published in the Federal Register May 13, 1988 (53 FR 17054), should be adopted as a final rule. Accordingly, the proposed rule which was published in the Federal Register on May 13, 1988 (53 FR 17054), is adopted, with minor corrections for clarity and typographical errors, as the final rule.

List of Subjects in 7 CFR Part 780

Administrative practices and procedures.

Final Rule

Accordingly, Chapter VII, Title 7 of the CFR Part 780 is revised to read as follows:

PART 780—APPEAL REGULATIONS

Sec.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended. 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); section 8 of the Soil Conservation and Domestic Allotment Act, as amended, 49 Stat. 1149 as amended (16 U.S.C. 590h).

§ 780.1 Basis, purpose and applicability.

(a) The regulations set forth in this Part are applicable to all programs administered by the county and State Agricultural Stabilization and Conservation committees ("county committee" and "State committee," respectively) and the Deputy Administrator, State and County Operations ("Deputy Administrator") of the Agricultural Stabilization and Conservation Service ("ASCS"), except as otherwise may be provided in individual program requirements. These regulations prescribe the rules and procedure that must be followed by a person who seeks reconsideration or review of a determination made with respect to:

(1) Denial of participation in such a program;

(2) Compliance with program requirements;

(3) The making of payments or other program benefits to a person who is a participant in such a program; and

(4) The making of payments or other program benefits to a person who is not a participant in such a program.

(b) Reconsideration and review under this Part is limited to only individual determinations made with respect to those persons meeting the requirements of paragraph (a) of this section. Accordingly, there is no review under this Part with respect to general program requirements that are applicable to all program participants.

§ 780.2 Definitions.

(a) "Participant" means any person whose right to participate in, or receive payments or other benefits in accordance with, any of the programs to which these regulations apply who is affected by a determination of the county committee, State committee, or the Deputy Administrator.

(b) "Reviewing authority" means the county committee, State committee, or the Deputy Administrator, as is appropriate.

(c) "State committee" means in Puerto Rico and the Virgin Islands, insofar as is practical, the Director of the Caribbean Area ASCS office.

§ 780.3 Request for reconsideration.

Any participant who believes that a proper determination has not been made in accordance with applicable program regulations or that all of the facts were not considered with respect to any such determination initially made by the county committee, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing therewith by filing a request for reconsideration with the reviewing authority which initially made such determination.

§ 780.4 Appeal to the State committee.

Any participant who believes that a proper determination has not been made by the county committee upon its reconsideration of an initial determination may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an appeal with the State committee.

§ 780.5 Appeal to Deputy Administrator.

Except as provided in § 780.11, any participant who believes that a proper determination has not been made by the State committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator.

§ 780.6 Time limitations for filing requests for reconsideration or appeals.

(a) A request for reconsideration or appeal by a participant from any determination shall be filed within 15 days after written notice of the determination is mailed to or otherwise made available to the participant. A request for reconsideration or appeal shall be considered to have been "filed" when personally delivered to the appropriate office or when post-marked.

(b) Whenever the final date for filing a request for reconsideration or appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the close of business on the next working day.

(c) A request for reconsideration or appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the reviewing authority with whom such request is made, the circumstances warrant such action.

§ 780.7 Form of request for reconsideration or appeal.

Each request for reconsideration or appeal shall be in writing and signed by the participant or by an authorized representative of the participant. Each request for reconsideration or appeal shall be supported by a written statement of facts, which may be submitted with or as a part of the request for reconsideration or appeal, or at any time prior to the hearing. The participant may request an informal hearing or may request a determination to be made by the reviewing authority without a hearing on the basis of the written statement submitted and other information available to the reviewing authority. If a request for an informal hearing is not made by the participant, the reviewing authority shall make its determination on the basis of the material that was made available in making the prior determination and the material submitted by the participant.

§ 780.8 Nature of informal hearing.

(a) The hearing shall be held at the time and place designated by the reviewing authority.

(b) The hearing shall be conducted by the reviewing authority, or a representative of the reviewing authority, in the manner deemed most likely to obtain the facts relevant to the matter in issue. The participant shall be advised of the issues involved. The reviewing authority may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(c) The participant, or an authorized representative of the participant, shall be given a full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. At its discretion, the reviewing authority may request or permit persons other than those appearing on behalf of the participant to present information or evidence at such hearing and, in such event, may permit the participant to question such persons.

(d) The reviewing authority shall have prepared a written record containing a clear, concise statement of the facts as asserted by the participant and material facts found by the reviewing authority. The names of interested persons appearing at the hearing shall be included. A verbatim transcript may be made if:

(1) The participant requests at a reasonable period prior to the time the hearing begins that the reviewing authority provide for such a transcript and agrees to pay the expense thereof, or

(2) The reviewing authority determines that such a transcript is appropriate.

(e) If, at the time scheduled for the hearing, the participant is absent and no appearance is made on behalf of the participant, the reviewing authority shall, after a reasonable time conclude the hearing, or may, at its discretion, accept information and evidence submitted by other persons present at the hearing.

§ 780.9 Determination.

(a) The reviewing authority prior to making a determination may request the producer or participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review and within program authorities, the reviewing authority may affirm, modify, or reverse any determination made by it initially or made by a lower reviewing authority, or may remand the matter to a lower reviewing authority for such further consideration as is deemed appropriate. The producer or participant shall be notified in writing of the determination. The notification shall clearly set forth the basis for the determination. Each other person affected by the determination shall be notified in writing of the determination. Determinations made by the Deputy

Administrator shall not be appealable by the producer or participant.

(b) When a producer requests copies of documents, information, or evidence upon which a determination is made or which will form the basis of the determination, copies of such documents, information or evidence shall be made available as provided in Part 798 of this chapter.

§ 780.10 Reopening of hearing.

The reviewing authority may, upon its own motion or upon request of the participant, reopen any hearing for any reason it deems appropriate unless the matter has been appealed to or considered by a higher reviewing authority.

§ 780.11 Requests for reconsideration and appeals requiring special handling.

Notwithstanding any other provision at this part, determinations:

(a) Made under a conservation program involving a finding or certification by a technician of the Soil Conservation Service or Forest Service, or determinations of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority, and

(b) Made by a State committee with respect to program payment yields or crop acreage bases are not appealable.

§ 780.12 Delegation of authority.

Nothing contained in these regulations in this part shall preclude the Administrator, ASCS, or the Executive Vice President, Commodity Credit Corporation, or a designee from determining at any time any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determination made a county or State committee or the Deputy Administrator.

§ 780.13 OMB—Control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 780) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Signed in Washington, DC, this 1st day of November 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-25827 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-05-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615 and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 614, 615 and 618 on September 14, 1988 (53 FR 35427). The final regulations to Parts 614, 615 and 618 relate to borrower rights which include, among others, procedures for the restructuring of loans from certain Farm Credit System (System) institutions and other "qualified lenders," which have become "distressed loans" as those terms are defined in the Act; protection for certain borrower stock; certain protections for borrowers who have met all loan obligations; cooperation by System institutions with certified State agricultural loan mediation programs; and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 14, 1988.

EFFECTIVE DATE: October 14, 1988, except for the portion of § 614.4367(c)(1) which states, "* * * including the effective interest rate;" and paragraph (d)(1) of that section. See separate **Federal Register** document published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: After publication of the final regulations, the Farm Credit Administration (FCA) received comments from the Farm Credit Corporation of America and other Farm Credit System institutions that they could not presently comply with the above-cited deferred portions of the regulations. The comments stated that even if such compliance were possible some time in the future, it would result in exorbitant and unnecessary costs to the Farm Credit System. Furthermore, the comments questioned the meaningfulness of the disclosures in the form required by the FCA.

Thus, pending further action, the effective date of portions of the regulations is delayed resulting in the deferral of the following portions of the regulations: (1) That portion of § 614.4367(c)(1) which states "* * *, including the effective interest rate;" and (2) paragraph (d)(1) of that section.

The deferral of the above-cited portions means that lenders presently are not required to disclose to borrowers the new effective interest rate when it has been changed due to either a change in the stated contract rate, or due to a change in the amount of stock or participation certificates which borrowers are required to own.

The deferral does not exempt lenders from all other requirements of the regulations, including the remaining portions of § 614.4367 (c) and (d) which were effective as of October 14, 1988. Thus, borrowers must be informed of any change in the interest rate when adjusted by the lender, the date on which the new rate is effective, and all other requirements of § 614.4367(c). In addition, borrowers must be notified of action that changes the effective interest rate, such as a change in the amount of stock or participation certificates which borrowers are required to own, as well as all other disclosure requirements found in § 614.4367(d).

(12 U.S.C. 2252(a) (9) and (10))

Dated: November 3, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88-25829 Filed 11-7-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-18]

Establishment of Transition Area; Monticello, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Monticello, IL, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Monticello Aviation, Inc. Airport, Monticello, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument

conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

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

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 24, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Monticello, IL (53 FR 32251).

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

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Monticello, IL.

The development of a new VOR–A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monticello, IL [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Monticello Aviation, Inc. Airport, Monticello, IL (lat. 40°00'20" N., long. 88°33'30" W.).

Issued in Des Plaines, Illinois, on October 25, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–25737 Filed 11–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25729; Amdt. No. 1386]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

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

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

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

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

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of The Amendment

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

PART 97—[AMENDED]

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

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

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

. . . Effective January 12, 1989

Goshen, IN—Goshen Muni, LOC RWY 27, Amdt. 2, CANCELLED
Goshen, IN—Goshen Muni, ILS RWY 27, Orig.

. . . Effective December 15, 1988

Anvik, AK—Anvik, NDB RWY 35, Orig., CANCELLED
Shishmaref, AK—Shishmaref, NDB RWY 15, Orig., CANCELLED
Shishmaref, AK—Shishmaref, NDB RWY 33, Orig., CANCELLED
Aspen, CO,—Aspen-Pitkin Co/Sardy Field, VOR/DME-C, Amdt. 2
Jasper, GA—Pickens County, NDB RWY 34, Orig.
Lihue, HI—Lihue, VOR-A, Amdt. 3
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 18, Amdt. 9
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 27, Amdt. 4
Lawrenceville, IL—Lawrenceville-Vincennes Intl, VOR RWY 36, Amdt. 9
Indianapolis, IN—Indianapolis Brookside Airpark, VOR RWY 36, Amdt. 5
Indianapolis, IN—Greenwood Muni, VOR-A, Amdt. 1
Indianapolis, IN—Indianapolis Metropolitan, VOR RWY 32, Amdt. 6
Indianapolis, IN—Mount Comfort, VOR RWY 34, Amdt. 1
Indianapolis, IN—Mount Comfort, ILS RWY 25, Amdt. 2
Decorah, IA—Decorah Muni, VOR RWY 29, Amdt. 2
Decorah, IA—Decorah Muni, NDB RWY 29, Amdt. 8
Decorah, IA—Decorah Muni, RNAV RWY 29, Amdt. 2
Louisville, KY—Standiford Field, ILS RWY 29, Amdt. 17
Crete, NE—Crete Muni, VOR/DME RWY 17, Amdt. 2
Crete, NE—Crete Muni, VOR/DME RWY 35, Amdt. 2
Crete, NE—Crete Muni, NDB RWY 17, Amdt. 1
Crete, NE—Crete Muni, NDB RWY 35, Amdt. 1
Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Orig.
Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Amdt. 21, CANCELLED
Fayetteville, NC—Fayetteville Regional/Grannis Field, VOR RWY 28, Amdt. 7
Fayetteville, NC—Fayetteville Regional/Grannis Field, RADAR-1, Amdt. 6
Albemarle, NC—Stanly County, NDB RWY 4, Amdt. 3
North Bend, OR—North Bend Muni, NDB RWY 4, Amdt. 2
North Bend, OR—North Bend Muni, ILS RWY 4, Amdt. 3
Pawtucket, RI—North Central State, LOC RWY 5, Amdt. 3
El Paso, TX—El Paso Intl, LOC BC RWY 4, Amdt. 5, CANCELLED
El Paso, TX—El Paso Intl, LOC/DME RWY 4, Orig.

. . . Effective November 17, 1988

Newark, NJ—Newark Intl, ILS RWY 4L, Amdt. 9

. . . Effective October 20, 1988

Farmington, NM—Four Corners Regional, ILS RWY 25, Amdt. 3
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 4
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 4
Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Amdt. 3

. . . Effective October 19, 1988

St. Louis, MO—Lambert-St. Louis Intl, LDA/DME RWY 12L, Amdt. 4

. . . Effective October 14, 1988

Houston, TX—Houston Intercontinental, ILS RWY 8, Amdt. 17

[FR Doc. 25738 Filed 11-7-88; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of Interim Rules.

SUMMARY: In compliance with an order of the United States District Court for the Central District of California, the United States Information Agency (the "Agency" or "USIA") on November 16, 1987 published interim rules to amend regulations found at 22 CFR Part 502 which implement the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* ("Beirut Agreement of 1948") at 52 FR 43753. On May 13, 1988, the District Court found the interim regulations unconstitutional and ordered the Agency to draft new regulations. By order dated September 9, 1988, the court required that the new regulations be promulgated within 60 days. This notice sets forth the new set of interim regulations. The USIA seeks comments on the new interim regulations.

DATES: The interim regulations shall become effective November 8, 1988. Comments are invited and will be accepted by the Agency until January 9, 1989.

ADDRESS: Interested persons should submit relevant views and comments to Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485–8829.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: By advance notice of proposed rulemaking published at 52 FR 25384, July 7, 1987 (republished in its entirety because of typesetting errors at 52 FR 26156, July 13, 1987), the USIA instituted a rulemaking proceeding in response to an order of the United States District Court for the Central District of California in *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court held that part of the regulations implementing the Beirut Agreement were unconstitutional, and enjoined USIA from enforcing the invalidated sections of the regulations. In addition, the court ordered that USIA reconsider six films which had been denied certification under 22 CFR Part 502. Consequently, in order to aid the Agency in complying with the district court's order, the Agency requested public comments as to whether and how the challenged regulations could be redrafted in a way which would both satisfy the district court's ruling and comply with the terms and requirements of the Beirut Agreement, as interpreted by the United States, UNESCO and the international community. After review of the public comments received, the Agency adopted interim regulations. By order dated May 13, 1988, the court invalidated the interim regulations as unconstitutional. On September 9, 1988, the court ordered the Agency to promulgate regulations which are to become effective within 60 days. Accordingly, the Agency will set forth the new interim regulations with its reasons therefor.

The *Background* and *The Court's Decisions* sections set forth at 52 FR 43754–55 are included here by reference. In addition, on May 17, 1988, a three-judge panel of the United States Court of Appeals for the Ninth Circuit affirmed the district court's October 1986 decision declaring parts of the original regulations unconstitutional. *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988). The Court of Appeals decision struck down, as contrary to the First and Fifth Amendments of the Constitution, the operative terms of Article I of the Beirut Agreement which define the materials which are eligible for certification under the treaty. On June 30, 1988, Agency petitioned the Ninth Circuit for rehearing *en banc* of the panels' decision invalidating the language of Article I of the treaty. That rehearing petition is presently pending before the court of appeals.

Discussion

For purposes of this second set of interim regulations, the Agency's objective is to resume administering the Beirut Agreement without violating applicable constitutional requirements as defined by the district court. The Agency adopts the new interim regulations set forth below to substitute for the prior interim regulations issued in November 1987, which were invalidated by the district court. These new interim regulations are adopted at this time because of the public interest served by this nation's participation under the treaty. Although the Agency does not believe that these interim regulations fully implement the treaty, they are adopted to promote the public interest, in accordance with the requirements of the district court's orders. The Agency is vigorously pursuing its appeal of the court's judgment that the November 1987 interim regulations are unconstitutional and, if that judgment is reversed on appeal, the Agency intends to resume operating under the November 16, 1987 (52 FR 43753) interim regulations.

As guided by the district court's May 13, 1988 Memorandum Decision and Opinion, the Agency has drafted the new interim regulations to make clear that certifiable materials must teach or explain through a reasoned development of a subject or aspect of a subject so as to aid the viewer or listener in a learning process. Through these criteria, the Agency will focus on the reasoned development of the conclusions stated in the material by looking at the method by which the subject matter is presented rather than the general acceptance of the conclusions stated. The new interim regulations clarify that which has always been the case—that the Agency renders no judgment as to the viewpoints or positions expressed in the materials, and that materials may qualify for certification even if their viewpoints or positions are unpopular or are not generally accepted. This approach follows, in many respects, the "Methodology Test" developed by the Internal Revenue Service for determining if organizations qualify as "educational" under 26 U.S.C. 501(c)(3), which the district court recommended as a possible basis for development of new regulations by the Agency. *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. at 508–09.

The Agency will interpret Article I of the Beirut Agreement as excluding from consideration materials which present information so selectively as to constitute hate materials, or which express conclusions more on the basis of strong emotional feelings than objective evaluations. For example, the racial supremacist material involved in *National Alliance* v. *United States*, 710 F.2d 868 (1983), would not qualify under this requirement.

In addition, the new interim regulations reiterate Article I's requirement that the technical quality of the materials must be such that it does not interfere with the use of the materials. For example, sound tracks must be clear and distinct, and photography must be sharp and easy to watch.

Furthermore, the new interim regulations contain several other changes from the prior interim regulations to bring them into compliance with the Court's May 13, 1988 opinion. The Agency will no longer

determine whether the material is "presented in a primarily factual or demonstrative manner,"—language which the Court determined to be vague. Further, the regulations no longer require that facts stated in the materials must "represent the current state of factual knowledge," a provision which the Court interpreted as narrowly limiting materials to espousing only what is commonly accepted as conventional wisdom. Moreover, the new regulations do not require that material which advocates a conclusion or viewpoint for which different viewpoints exist must acknowledge or refer to the existence of a difference of opinion or other point of view. The district court found this requirement too broad to comply with constitutional principles, and the requirement has been eliminated from the new regulations.

Finally, the prior interim regulations contained authority for the Agency to identify otherwise certifiable material as "propaganda" if the material was substantially adapted to prevail upon, indoctrinate or influence a viewer or user to a particular political, religious or economic view. Because the district court found this provision to be invalid, the Agency will not under these regulations identify materials it finds propagandistic on the certificate.

Findings and Conclusions

The Agency adopts the regulations set forth herein on an interim basis effective November 8, 1988, and will begin to make certification decisions at that time. The public is invited to submit comments in a timely manner as described earlier in this notice.

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6(a)(3) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Numbers.

List of Subjects in 22 CFR Part 502

Education, Imports, Trade agreements.

PART 502—[AMENDED]

The authority citation for 22 CFR Part 502 continues to read:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 et seq., E.O. 11311, 31 F.R. 13431, 3 CFR 1966–1970 comp. page 593.

2. In § 502.6, paragraph (a)(3) is revised to read as follows:

§ 502.6 Substantive criteria

(a) * * *

(3) Audio visual materials which are deemed "educational, scientific or cultural" for the purposes of Article I of the Beirut Agreement of 1948 are those whose "primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; when the materials are representative, authentic, and accurate; and when the tehnical quality is such that it does not interfere with the use made of the material." This means that:

(i) The subject matter of the materials must teach or explain through a reasoned development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The educational character of the materials may be evidenced by a teacher's guide, study guide or similar collateral instructional materials prepared by a bona fide subject matter specialist.

(ii) Materials which present viewpoints, positions, facts or information so selectively as to constitute an incitement of hatred or violence against a government, group or person, or which make use of inflammatory or disparaging terms or express conclusions more on the basis of strong emotional feelings than objective evaluations, will not be deemed educational. For example, facts or information presented in such a way as to constitute hate material (such as the racial supremacist material involved in *National Alliance* v. *United States*, 710 F.2d 868 (1983)), does not qualify for certification.

(iii) The technical quality of the materials must be such that it does not interfere with the use of the materials. For example, sound tracks must be clear and distinct, and photography must be sharp and easy to watch.

* * * * *

Dated: October 28, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88–25766 Filed 11–7–88; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–225–D]

Occupational Exposure to Formaldehyde; Approval of Information Collection Requirements; Start-Up Date; Clarification; Technical Amendment; Request for Comment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; Notice of approval of information collection requirements; clarification and technical amendment; request for comment.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** for occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). On February 2, 1988, the Office of Management and Budget (OMB), in accordance with its authority under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320, approved the information collection requirements contained in the final rule with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii), concerning hazard communication. OSHA resubmitted its request for approval of paragraphs (m)(1)(i) through (m)(4)(ii) and on October 7, 1988, OMB approved paragraph (m)(1)(i) for one year and paragraphs (m)(1)(ii) through (m)(4)(ii) for three years. The OMB clearance number is 1218–0145.

OSHA is providing a sixty day start up period, until December 6, 1988, before it will begin enforcing the newly approved hazard communication provisions. During this period OSHA will consider the petition filed by the Formaldehyde Institute and others for an administrative stay of these

provisions pending either judicial review or a new rulemaking limited to the provisions of paragraph (m)(1)(i). OSHA is also seeking comment on whether or not to grant the petition and to initiate limited rulemaking.

This notice also provides a clarification of the labeling provisions.

DATES: *Effective date*: December 6, 1988.

Comments on whether to grant the administrative stay and whether to institute additional rulemaking must be received no later than November 29, 1988.

ADDRESSES: Written comments should be submitted to the OSHA Docket Office, Docket No. H–225–D, Room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Paperwork Approval

OSHA published a final rule on formaldehyde on December 4, 1987 (52 FR 46168). On February 2, 1988, under the Paperwork Reduction Act, OMB approved all of the paperwork requirements of 29 CFR 1910.1048 with the exception of those contained in paragraphs (m)(1)(i) through (m)(4)(ii). OSHA informed the public of this fact and of the OMB clearance number on March 2, 1988 (53 FR 6626).

The disapproved paragraphs contained criteria for determining when the presence of formaldehyde constitutes a health hazard and prescribed information that must be included on hazard warning labels on containers of formaldehyde, and containers of certain formaldehyde-treated products as well as information to be included in the accompanying Material Safety Data Sheets (MSDSs).

On July 7, 1988, OSHA resubmitted its request for information collection approval of paragraphs (m)(1)(i) through (m)(4)(ii) of 29 CFR 1910.1048, with a more detailed justification. The entire text of the resubmission was printed in the **Federal Register** on July 12, 1988 (53 FR 26329).

On October 7, 1988, OMB approved the information collection requirements in paragraph (m)(1)(i) for one year, until October 7, 1989. Paragraph (m)(1)(i) sets forth objective criteria that establish when formaldehyde constitutes a "health hazard" for purposes of triggering the labeling provisions and the requirements for availability of MSDSs. At the same time, paragraphs (m)(1)(ii) through (m)(4)(ii) were approved for three years, until October 7, 1991. These paragraphs prescribe the information to be included on hazard warning labels for formaldehyde and set forth procedures for developing, updating and distributing MSDSs to accompany formaldehyde and formaldehyde-containing products.

II. Clarification of the Labeling Provisions

Paragraph (m)(3)(i) of 29 CFR 1910.1048 requires the employer to assure that hazard warning labels complying with the requirements of the Hazard Communication standard, 29 CFR 1910.1200(f), "are affixed to all containers where the presence of formaldehyde constitutes a health hazard." As noted above, paragraph (m)(1)(i) sets forth objective criteria for ascertaining when formaldehyde constitutes a health hazard. The hazard warning label must identify the hazardous chemical, list the name and address of the responsible party, contain the information "Potential Cancer Hazard" and appropriately warn of all other hazards.

Questions were raised as to the nature of the container that was required to be labeled. For example, in its initial disapproval of paragraph (m)(1)(i) through (m)(4)(ii), OMB stated:

> The F.S. [Formaldehyde Standard] also introduces uncertainty about whether for purposes of Hazard Communication, a solid object is a "container", a "mixture", neither or both.

Several statements in the preamble to the final rule were said to contribute to the uncertainty. Because of this apparent confusion, OSHA hereby reiterates that the labeling requirement of the formaldehyde standard applies to containers, and not products. All statements pertaining to the placement of hazard warning labels in the summary and explanation of paragraph (m) of the final rule on formaldehyde (52 FR 46282–46285), apply to containers. The containers, not the solid products, must bear the warning label. To interpret this language otherwise would contradict not only the language of the standard itself, but also the stated intent of the Formaldehyde Standard (52 FR 46282) to be consistent with the Hazard Communication Standard (29 CFR 1910.1200).

III. Technical Amendment

OSHA is amending the language at the end of the final rule on formaldehyde as it appears in the Code of Federal Regulations to reflect the fact that all paragraphs of the standard have been approved by OMB under Control Number 1218–0145.

IV. Start-Up Dates and Consideration of Administrative Stay Petition and Possible Additional Limited Rulemaking Requirements

OSHA is providing a sixty day start-up period from the date of OMB's approval, until December 6, 1988, before it will begin enforcing the newly approved labeling provisions. This period is reasonable and appropriate in view of the fact that that was the amount of time originally allotted for the public to become familiar with the various provisions of the formaldehyde standard before any provision became effective. During this period, affected employers are expected to continue to comply with the provisions of OSHA's Hazard Communication standard (29 CFR 1910.1200) which contains similar obligations.

The final rule for formaldehyde, 29 CFR 1910.1048, is the subject of several petitions for judicial review under section 6(f) of the Occupational Safety and Health Act (see *UAW, et al.* v. *John A. Pendergrass, Assistant Secretary of Labor, et al.*, D.C. Cir., No. 87–1743). In addition, the Formaldehyde Institute and others have petitioned the Agency for an administrative stay of the warning label requirement pending the outcome of judicial review of a new rulemaking limited to the provisions of paragraph (m)(1)(i). In their petition, which is in the Formaldehyde Docket as Exhibit 251–4 (Docket H–225C), the Formaldehyde Institute contends that "[t]his requirement is on the one hand, unnecessary for worker protection and, on the other hand, devastating to the business of various industries which manufacture and sell products emitting minimal amounts of formaldehyde." OSHA initially declined to entertain the administrative stay petition because of the uncertain status of paragraph (m) due to the original OMB disapproval under the Paperwork Reduction Act. Since OMB has recently approved the information collection requirements for hazard warning labels, it appears to be appropriate to consider the merits of the petition at this time.

To assist OSHA in evaluating the petition, OSHA is seeking comment on the warning label requirements of the standard, particularly the appropriateness of the criteria set forth in paragraph (m)(1)(i). Since the publication of the final standard on December 4, 1987, OSHA has received numerous comments on this requirement raising both substantive and procedural

issues. One such issue has been the question of the ability of employers to accurately measure formaldehyde emissions at the 0.1 ppm level. Petitioners have also urged OSHA to undertake additional rulemaking to reconsider the provisions of paragraph (m)(1)(i). Comments on this issue are also requested.

V. Public Participation

Interested persons are invited to submit written views and arguments as to whether the administrative stay petition (Exhibit 251–4, Docket H–225–C) should be granted and also whether the Agency should undertake additional rulemaking to reconsider the provisions of 29 CFR 1910.1048(m)(1)(i). These comments must be submitted in quadruplicate to the Docket Officer, Docket H–225–D, Room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 and must be received in the Docket Office no later than November 29, 1988. All submissions will be available for public inspection and copying at the above address.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC this 4th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911. Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. * * * Section 1910.1048 also issued under 29 U.S.C. 653.

§ 1910.1048 [Amended]

2. By revising the language at the end of § 1910.1048 to read as follows:

(Approved by the Office of Management and Budget under Control Number 1218–0145)

[FR Doc. 88–25959 Filed 11–7–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Gross Proceeds Definition in Oil and Gas Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending the definition of "gross proceeds" in its recently adopted regulations governing the valuation for royalty purposes of oil and gas production from Federal and Indian leases (including leases on the Outer Continental Shelf) as the result of an adverse court decision. As amended, so-called "take-or-pay payments" no longer would be part of a lessee's gross proceeds. The MMS also is deleting the references to payments for advanced exploration or development costs and prepaid reserve payments in the "gross proceeds" definition.

The MMS also is amending Notice to Lessees of Federal Onshore Oil and Gas Leases Number 1 (NTL–1) and Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL–1A) to remove the requirement to pay royalties on take-or-pay payments. These notices to lessees and operators were effective from January 25, 1977, and April 5, 1977, respectively, to March 1, 1988.

EFFECTIVE DATES: Changes to 30 CFR Part 206—March 1, 1988; changes to NTL–1—January 25, 1977, and NTL–1A—April 5, 1977.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Charles Brook of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS.

I. Background

On January 15, 1988, MMS published notices in the **Federal Register** (53 FR 1184 and 53 FR 1230) of final rulemaking governing the valuation, for royalty purposes, of oil and gas produced from Federal onshore and Outer Continental Shelf leases and from Indian Tribal and allotted leases. The rules amended previous valuation regulations and became effective March 1, 1988.

Under the definition of "gross proceeds" at 30 CFR 206.151, the new rules specifically included take-or-pay payments as part of "the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products." Accordingly, lessees were required to pay royalties on take-or-pay payments when those payments were received.

The Department of the Interior's (Department) position requiring royalties on take-or-pay payments predated the new rulemaking and represented a long-standing policy. While the rulemaking process was ongoing, the take-or-pay position was being challenged in two U.S. District Courts and resulted in conflicting decisions. In *Mesa Petroleum Company v. U.S. Department of Interior*, 647 F. Supp. 1350 (W.D. La., November 10, 1986), the U.S. District Court for the Western District of Louisiana determined that there is no statutory, regulatory, or contractual authority to collect royalties on take-or-pay payments. However, in *Diamond Shamrock Exploration Co. v. Donald P. Hodel, et al.* (E.D. La., Civil No. 86–0537, and consolidated cases, January 23, 1987), the U.S. District Court for the Eastern District of Louisiana agreed with the Department that take-or-pay payments are part of the lessee's gross proceeds for the disposition of production and thus are royalty-bearing at the time the take-or-pay payments are received.

The two District Court decisions were consolidated on appeal to the Court of Appeals for the Fifth Circuit (Nos. 87–3207, 87–3195, and 87–4069, respectively). On August 17, 1988, the Court ruled that "* * * royalty payments are not due on take-or-pay payments and are only due on gas actually produced and taken (i.e., so-called "make-up" gas)." In reaching its decision, the Court held that the Department's position of treating take-or-pay payments, when made, as part of the value on which royalty is due did not comport with either the intent of the governing statutes or the language of the relevant leases and regulations, which require that royalties are due only on the value of "production" saved, removed, or sold from the leased property. The Court adopted as the legal

definition of the word "production", as used in the context of calculating royalty payments, the actual physical severance of minerals from the formation. Accordingly, the Court concluded that "royalty payments are due only on the value of minerals actually produced, i.e., physically severed from the ground. No royalty is due on take-or-pay payments unless and until gas (namely, make-up gas) is actually produced and taken."

A. Take-or-Pay Requirement in Section 206.151

The Fifth Circuit's ruling therefore requires that MMS amend its regulations to remove the requirement to pay royalties on take-or-pay payments at the time the payment is made. Of course, royalties still are due when make-up gas is taken.

B. Advanced Payments

The definition of "gross proceeds" in § 206.151 of the recently adopted gas valuation rules also requires the following:

> Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production.

The advanced payment program was initiated in 1970 and was designed to facilitate capital formation by producers to finance development and production of new gas supplies in order to help alleviate the existing natural gas shortage. The advanced payment program was governed successively by a series of five "advanced payment orders" issued by the Federal Power Commission (FPC) until the program's termination at the end of 1975. FPC Orders Nos. 410, 410–A, 441, 465, and 499 governed advances made pursuant to contracts entered into after October 1, 1970, through December 31, 1975.

The program was conditionally supported in *Public Service Commission, State of New York v. FPC*, 151 U.S. App. D.C. 307, 467 F.2d 361 (1972), as a "justifiable experiment in the continuing search for solutions to our nation's critical shortage of natural gas."

Under the requirements of the FPC advanced payment program, pipelines provided production capital in the form of pre-payments to producers (advanced payments) for future deliveries of natural gas. Producers were expected to seek advanced payments because the advances would provide them with a source of interest-free capital. It was anticipated that pipeline participation in the program would be assured since pipeline rates could reflect a return on qualifying advanced payments. Furthermore, pipeline participation was encouraged by the prospect of securing needed gas reserves for the future while transferring to the rate payer the added cost of making advanced payments for gas.

The "cost" to the pipeline of an advanced payment was the cost of financing the amount advanced, a factor principally determined by interest rates in the bond market. Current purchasers from the pipeline would shoulder, in the rates they paid, the "carrying charges" on these interest-free loans to producers.

In effectuating an advanced payment, the producer and the pipeline would enter into a contract specifying the amount advanced, the potential production committed, and the rate of reimbursement whether through delivery of production or other arrangements such as periodic payments. When production was about to commence, the producer and the pipeline would enter into a typical gas purchase contract which was separate from the advanced payment contract. In some cases the gas purchase contract would reflect terms governing the reimbursement associated with the advanced payment.

Qualifying advance payments had to be made prior to deliveries under an associted purchase contract. Substantial lag times were inevitable between the date of the advance and its full repayment in gas, especially if the advance were made to fund exploration or other pre-production producer expenditures. Advances had to be fully recovered within a "reasonable period of time following commencement of deliveries," and in any case "within a 5-year period * * *" following initial delivery.

Section 206.151 required that royalty be paid on the full amount of the advanced payment at the time when production first begins, when the amounts advanced become repayable in gas, because the payments become consideration for gas at that point. This requirement was analogous to the requirement to pay royalty when a take-or-pay payment was made, not when the make-up gas was produced, because the take-or-pay payment was part of the total consideration for all gas purchased under the contract when received. In view of the Fifth Circuit's ruling that royalty is not owed until make-up gas is actually produced and taken, it follows that no royalty is due on advanced payments until the specific gas which repays the advanced payment actually is produced. Therefore, MMS is removing the requirement from the rules. A similar advanced payment provision is being removed from the oil valuation rules, § 206.101.

C. Notice to Lessees—1 and 1A

For onshore Federal and Indian leases, a prior rule required royalties to be paid on take-or-pay payments. In 1977, following proposals and an opportunity to comment, the Department adopted Notice to Lessees and Operators of Federal Onshore Oil and Gas Leases (NTL–1, 42 FR 4546, January 25, 1977) and Notice to Lessees and Operators of Indian Oil and Gas Leases (NTL–1A, 42 FR 18135, April 5, 1977). Part III of both NTL–1 and NTL–1A provides:

> Payments made by a gas purchaser pursuant to a contractual "take-or-pay" clause are subject to royalty under the terms of the lease agreement.

Therefore, the Department by rule required royalty to be paid on take-or-pay payments for onshore Federal and Indian oil and gas leases as early as 1977. The Fifth Circuit's ruling thus requires that these rules also be amended so as to be consistent with the underlying statutes and lease terms.

NTL–1 and NTL–1A were terminated when the new product value rules became effective on March 1, 1988. Therefore, the rule change is being made for the 1977–1988 period so that the legally proper standard can be applied for audits, etc. which relate to the time period when the rules were effective.

The Department is continuing to review the Fifth Circuit's decision to determine whether any other regulations or royalty valuation policies are affected by the Court's ruling.

II. Final Rule Amendments

To be consistent with the Fifth Circuit Court of Appeals' decision regarding royalties on take-or-pay payments, MMS is amending its gas valuation regulations by revising the definition of "gross proceeds" in 30 CFR 206.151; the definition is amended by deleting the term "Take-or-pay payments" from the third sentence, and by deleting the following sentence from the definitions of "gross proceeds" in both §§ 206.101 and 206.151:

> Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of the gross proceeds as of the time of first production.

Today's changes to the regulations regarding take-or-pay payments and advanced payments are consistent with, and are the minimum necessitated by, the Fifth Circuit's recent decision. Until the Department completes its consideration as to whether or not additional alterations to regulations or royalty valuation policies are required or suggested by the Court's ruling, the product value regulations will be premised on the concept that royalty value cannot be less than the gross proceeds accruing to the lessee. The MMS, therefore, will carefully review all situations to ensure that lessees do not improperly attempt to use contractual devices to avoid royalties by denominating as take-or-pay or advance payments other consideration which is part of the gross proceeds for production.

The final oil and gas valuation regulations became effective March 1, 1988. Therefore, this final rule amendment is also effective March 1, 1988.

The MMS also is amending § 206.150 to reflect the amendment to NTL–1 and NTL–1A to remove the last paragraph of section III which requires the reporting and payment of royalties on take-or-pay payments. This modification is effective as of the date of issuance of NTL–1 and NTL–1A, respectively, and effective until March 1, 1988, the date of termination of the notices.

III. Procedural Matters

Administrative Procedure Act

The United States Court of Appeals for the Fifth Circuit has determined that, based on the underlying statutes and leases, the Department cannot require lessees to pay royalties on take-or-pay payments unless and until there is make-up gas production. The rule changes provided herein are necessary to make the Department's rules consistent with the court's decision. Accordingly, there is good cause to determine that notice and public comment are unnecessary.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rulemaking amends existing regulations to reflect a court decision that royalties are not due only until minerals actually are produced.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: October 12, 1988.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Part 206, is amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. The definition of "gross proceeds" in § 206.101 of Subpart C is amended by deleting the fifth sentence. The revised definition reads as follows:

§ 206.101 Definitions.

* * * * *

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to, reimbursements for harboring or terminaling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

3. Paragraphs (e)(1) and (e)(2) of § 206.150 of Subpart D are amended to reflect the amendment of Notice to Lessees and Operators of Federal Oil and Gas Leases Number 1 (NTL–1) and Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL–1A) to remove the requirement to pay royalties on take-or-pay payments during the effective periods of the notices. The revised paragraphs read as follows:

§ 206.150 Purpose and scope.

* * * * *

(e)(1) Notice to Lessees and Operators of Federal Onshore Oil and Gas Leases Number 1 (NTL–1) is amended as of January 25, 1977, the effective date of NTL–1, by deleting the last paragraph of section III. NTL–1 was terminated effective March 1, 1988.

(e)(2) Notice to Lessees and Operators of Indian Oil and Gas Leases Number 1A (NTL–1A) is amended as of April 5, 1977, the effective date of NTL–1A, by deleting the last paragraph of section III. NTL–1A was terminated effective March 1, 1988.

* * * * *

4. The definition of "gross proceeds" in § 206.151 of Subpart D is amended by deleting the term "take-or-pay payments" from the third sentence and by deleting the fifth sentence. The revised definition reads as follows:

§ 206.151 Definitions.

* * * * *

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even

though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

[FR Doc. 88-25800 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 95

[DoD Directive 1005.13]

Gifts From Foreign Governments

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part is issued to reflect revised General Services Administration (GSA) regulations concerning the acceptance of gifts from foreign governments and their limits of monetary value. In addition, this Part now conforms to current organizational arrangements within the Office of the Secretary of Defense.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone (202) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 95

Foreign relations, DoD and Military Employees.

Accordingly, Title 32, Chapter I, is amended to add Part 95 as follows:

PART 95-GIFTS FROM FOREIGN GOVERNMENTS

Sec.

Authority: 10 U.S.C. 113.

§ 95.1 Purpose.

This Part:

(a) Updates policy governing the acceptance and retention of gifts from foreign governments.

(b) Implements DoD Directive 1005.13 and 5 U.S.C. 2105, 3109, and 7342 that allow Federal employees to accept certain gifts from foreign governments.

(c) Assigns responsibilities and prescribes procedures.

§ 95.2 Applicability.

This Part applies to:

(a) The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff (JCS); the Joint Staff; the Unified and Specified Commands; and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

(b) All DoD military and civilain personnel, their spouses (unless legally separated), and their dependents as defined in 26 U.S.C. 152 (hereafter called "employees").

§ 95.3 Definitions.

Employee. An employee of a DoD Component, as defined in 5 U.S.C. 2105; an expert or consultant under contract with a DoD Component, including any individual performing services for a DoD Component under 5 U.S.C. 3109 and members of the Military Services (including retired members and Reservists) regardless of duty status; the spouses of all such individuals (unless legally separated) and their dependents as defined in 26 U.S.C. 152.

Employing Component. The DoD Component in which the recipient is appointed, employed, or enlisted. If a recipient is a spouse or dependent of a serving individual, then the following Component is that in which the serving individual is appointed, employed, or enlisted.

(a) The Military Departments are considered the employing Components for all military and civilian personnel assigned to them. The Military Department also act as the employing Component for all personnel, military and civilian, either directly employed or assigned to the headquarters of Unified Commands.

(b) The OSD is considered the employing Component for its military and civilian personnel, the Joint Staff, the Defense Advanced Research Projects Agency (DARPA), the Defense Security Assistance Agency (DSAA), Strategic Defense Initiative Organization (SDIO), the DoD Field Activities, and other DoD activities not specifically designated an employing Component.

(c) The Defense Agencies (except DARPA, DSAA, and SDIO) are considered the employing Components for their civilian employees and for military members assigned to duty with them.

Foreign Government. Includes any unit of a foreign governmental authority, including any foreign national, state, local, and municipal government; any international or multinational organization whose membership is composed of any unit of foreign government; and any agent or representatives of any such unit or organization while acting as such.

Gift. Any tangible or intangible present by or received from a foreign government.

Minimal Value. A retail value in the United States at the time of acceptance not in excess of $180 or such amount specified by the Administrator of General Services under 5 U.S.C. 7342.

Responsible Accountable Official. The official designated by the employing Component to approve the annual report of foreign gifts.

Travel Expenses. Costs of transportation, food, and lodging incurred during the travel period.

§ 95.4 Policy.

No DoD employee may accept, request, or otherwise encourage the offer of a gift from a foreign government. Whenever possible, employees shall refuse accepance of gifts of any type or nature.

§ 95.5 Responsibilities.

(a) The *Director of Administration and Management, Office of the Secretary of Defense* (DA&M, OSD), shall:

(1) Develop policy and provide guidance to DoD employees regarding the acceptance and retention of gifts offered by foreign governments.

(2) Implement this Part for all OSD personnel as defined in paragraph (b) of definition *Employing Component*, § 95.3.

(b) The *Heads of DoD Components* shall designate an official who shall be responsbile for monitoring compliance with this Part and who shall:

(1) Establish procedures to ensure that employees are familiar with the requirements and restrictions governing acceptance of gifts from foreign governments under 5 U.S.C. 7342.

(2) Review cases in which there exists evidence of failure of any employee to comply with requirements, and establish disciplinary procedures.

(3) Report to the Attorney General, through the General Counsel of the Department of Defense (GC, DoD), when it is determined administratively that an employee who is the donee of a gift, or is the recipient of travel or travel

expenses, has failed to comply with the procedures established by 5 U.S.C. 2105, 3109 and 7342 through actions or circumstances within the donee's control.

(4) Obtain appraisals of the value of gifts, as required by 5 U.S.C. 7342 and GSA Regulation.

§ 95.6 Procedures.

(a) *Gifts of Minimal Value.* Table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of minimal value received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient. The burden of proof is upon the recipient to establish that the gift is of minimal value as *Minimal Value* defined in § 95.3.

(b) *Gifts of More Than Minimal Value.* (1) When a gift of more than minimal value is tendered, the donor shall be advised that statutory provisions and DoD policy prohibit employees from accepting such gifts, unless the gift is in the nature of an educational scholarship or medical treatment. If it appears that refusal of a gift, other than medical or educational, may offend or embarrass the donor or could affect adversely the foreign relations of the United States, it may be accepted. (See paragraph 1.c., Appendix of this Part.) The gift then becomes the property of the United States and shall be deposited with the employing DoD Component, in accordance with 41 CFR Part 101–49 and Appendix of this Part, within 60 days for return to the donor, for use within the Component, or for disposition by the GSA.

(2) When more than one tangible gift is included in a single presentation from the same donor to an employee, or jointly to an employee and spouse, the aggregate value of the gifts received at that time must not exceed the minimal value.

(c) An employing Component may, in its implementing documents:

(1) Provide that all gifts shall be appraised, and that the appraisal shall be conclusive as to the value of the gift.

(2) Define minimal value to be less than the figure set in definition *Minimal Value* of § 95.3.

(3) Require that acceptance and retention of any gift, regardless of value, be subject to approval of the DoD Component concerned.

(d) An employing Component is not required to report travel or travel expenses of more than minimal value that were authorized by that Component under conditions stipulated in item 5., Appendix to this Part.

(e) Any gifts not approved for acceptance by the employing DoD Component shall become the property of the United States and shall be reported as a gift to be disposed of in accordance with the procedures outlined in enclosure 2.

(f) The Attorney General may bring a civil action in any U.S. district court against any employee who knowingly violates 5 U.S.C. 7342. The court in which such action is brought may assess a penalty against that employee in an amount not to exceed the retail value of the gift improperly solicited or received, plus $5,000, in accordance with 5 U.S.C. 7342.

(g) *Receipt and Disposition of Gifts.* Procedures are provided in Appendix of this Part.

§ 95.7 Information requirements.

Interagency reporting requirements on gifts from foreign governments are licensed under IRCN 0216–DOS–AN.

Appendix A to Part 95—Procedures for the Receipt and Disposition of Gifts

1. Use or Disposal of Gifts that Become the Property of the United States

a. Any gift that becomes the property of the United States under 5 U.S.C. 7342 may be retained for official use by the employing Component that is responsible for the security of gifts in its custody. DoD Component regulations shall:

(1) Avoid to the maximum extent possible arbitrary action in approving or retaining gifts for official use.

(2) Ensure that all employees are provided the opportunity to receive the indirect benefit of gifts retained for official use. Gifts may not be used for the benefit of any individual. Gifts retained for official use shall be reported to the GSA under 41 CFR 101–49, subpart 2, within 30 calendar days after termination of the official use.

b. Gifts that the employing Component does not wish to retain or that are not approved for retention should be reported to the GSA within 30 calendar days after depositing the gift with the employing Component. In this case, the following actions apply:

(1) Complete Standard Form (SF) 120, "Report of Excess Personal Property," and forward to GSA, Property Management Division, Washington, DC 20406. A sample form and instructions are attached to this enclosure.

(2) The employing Component is responsible for the custody and security of gifts and shall hold them until instructions are received from GSA regarding their disposition.

(3) The employing Component shall be responsible for and bear the cost of care and handling of gifts in its custody and for delivery of the gifts to the physical custody of GSA after the screening period.

(4) Gifts for which there are no Federal requirements as determined by GSA may be offered for sale to recipients before donation when so requested by recipients.

(5) When a recipient indicates an interest in purchasing a gift, the gift is to be reported to GSA on SF 120, Report of Excess Personal Property (attachment 1), for utilization screening before sale to the recipient. GSA shall notify the employing agency if the gift will be offered for negotiated sale to the recipient. The employing agency shall obtain a commercial appraisal and forward a copy of it, attached to a copy of the original SF 120, to GSA. GSA shall notify the employing agency when action is completed. The sales price, to be paid to GSA, shall be the appraised value of the gift plus the cost of the appraisal.

c. If returning the gift to the original donor will adversely affect U.S. foreign relations, the disposing Component shall consult with appropriate officials in the Department of State (DoS) before taking any action.

d. GSA normally shall not take custody of gifts for which recipients have expressed an interest in purchasing. Such gifts shall remain in the physical custody and be the responsibility of the employing agency until recipients either purchase or decline to purchase them. GSA shall accept physical custody of gifts that recipients decline to purchase and that are not retained for official use or returned to the donors.

e. Disposal of Firearms. Firearms received as foreign gifts may be offered for transfer to Federal Agencies including law enforcement activities. Firearms not required for Federal use may be sold to interested recipients at the discretion of GSA. A certification that the recipient shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Those firearms not transferred to a Federal activity or sold to recipients shall be destroyed in accordance with 41 CFR Part 101–45.

2. *Recording of Gifts of More Than Minimal Value.* Each employing Component shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A compilation shall be made each year and transmitted to the Secretary of State no later than January 31. This compilation shall include the following information:

a. Name and title of recipient.

b. Brief description of the gift, date of acceptance, estimated value, and current disposition or location.

c. Identity of foreign donor and government.

d. Circumstances justifying acceptance.

3. *Donations or Transfer of Gifts.* a. A gift may be recommended for donation or transfer by the recipient to an eligible public agency or nonprofit tax-exempt institution for public display, reference, or use.

(1) The employee recipient may indicate a recommendation for donation with a statement on the SF 120 citing the specific donee. Justification for the request must be supported by a letter from the recipient outlining any special significance of the gift to the proposed donee. The mailing address

and telephone number of both the recipient and donee shall be included in the letter.

(2) The employee recipient may indicate a recommendation for transfer of a gift to an eligible public agency for public display or other authorized agency use. This request shall be indicated on the SF 120 citing the specific donee, and shall include a brief justification of the display or official use of the gift.

4. *Sale or Destruction of Tangible Gifts Valued at $180 or Less.* Employing Components are authorized to sell or destroy tangible gifts valued at $180 or less not retained by the recipient.

5. *Travel Expenses.* Employing Components shall include in their implementing documents criteria to be applied in determining the propriety of accepting travel expenses of more than minimal value, such as:

a. The travel shall begin and end outside the United States, except when travel across the continental United States (CONUS) is the shortest, least costly, or only available route to destination.

b. The travel shall be in the best interests of the Component and the U.S. Government considering all the circumstances.

c. The travel does not contravene any other Component regulation.

BILLING CODE 3810-01-M

PAGE 1 OF ____

STANDARD FORM 120 REV. APRIL 1957 GEN. SERV. ADMIN. FPMR (41 CFR) 101-43.311

REPORT OF EXCESS PERSONAL PROPERTY

1. REPORT NO	2. DATE MAILED	3. TOTAL COST
		$

4. TYPE OF REPORT (Check one only of "a," "b," "c," or "d") [X] a. ORIGINAL [ ] b. CORRECTED [ ] c. PARTIAL W/D [ ] d. TOTAL W/D (Also check "e" and/or "f" if appropriate) [ ] e. OVERSEAS [ ] f. CONTRACTORS INV

5. TO (Name and Address of Agency to which report is made) THRU
General Services Administration
Property Management Division
Washington, DC 20406

6. APPROP. OR FUND TO BE REIMBURSED (if any)

7. FROM (Name and Address of Reporting Agency)
Office of the Director of Administration and Management
Pentagon, Washington, DC 20301-1950 695-4506

8. REPORT APPROVED BY (Name and Title)
(Sign Here)
DA&M

9. FOR FURTHER INFORMATION CONTACT (Title, Address and Telephone No.)
Special Assistant, Office of the Director of Administration and Management
Washington, DC 20301-1950 695-4506

10. AGENCY APPROVAL (If applicable)
(Sign Here)

11. SEND PURCHASE ORDERS OR DISPOSAL INSTRUCTIONS TO (Title, Address, & Telephone No.)
See 9. above

12. GSA CONTROL NO.

13. FSC GROUP NO	14. LOCATION OF PROPERTY (If location is to be abandoned give date)	15. REIM REQD YES	15. REIM REQD NO	16. AGENCY CONTROL NO.	17. SURPLUS RELEASE DATE
	Room 3D972-Department of Defense The Pentagon				

18. EXCESS PROPERTY LIST

ITEM NO. (a)	DESCRIPTION (b)	COND. (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)
	FOREIGN GIFTS-AND/OR DECORATION						
0001.	Gift to Secretary of Defense John Jones: Floral embroidered wall hanging, appx 40" x 13-1/2", brocade trimming. Presented by the Ambassador of Italy, July 1, 1988 (commercial value $250). Appraisal attached (if applicable). Recipient Requests Option to Donate. (Justification letter attached)						
0002.	Gift to Thomas Brown, Director, Defense Agency Oval silver dish with floral design on rim, from Minister of Defense, Lion. Presented July 1, 1988 (commercial value $250). Appraisal attached. RECIPIENT REQUESTS OPTION TO PURCHASE.						
0003.	Unit Decoration (Not approved for acceptance) Presented to the 5401st Military Training Unit for outstanding meritorious service, presented July 15, 1988 by Ambassador Wung Lee in Plekie, Korea. Bronze Medal, Silver Ribbon, with citation and plaque (est. value $175). Unit requests option to retain or transfer to HQ, Mil Tng Gp for display purposes.						

STANDARD FORM 120 (REV. APRIL 1957) EDITION NSN

BILLING CODE 3810-01-C

Attachment 2 to Appendix

Instructions for Completion of Standard Form 120 "Report of Excess Personal Property"

Block 1—Enter the DoD Activity address code (six digits) identifying the reporting activity, and the Julian data (four digits) on which the report is prepared. If the report is a correction or withdrawal of a prior report, enter the original report number in block 1 and mark the appropriate type of report in block 4.

Block 2–17—Self-explanatory.

Block 18(a)—Enter a unique four-digit number for each item. Any combination of alpha and/or numeric characters may be used except the alpha characters I and O.

18(b)—Include the name and position of the employee recipient, to include address and telephone number if purchase or donation is desired. Also include a full description of the gift and the identity of the foreign government and the name and position of the individual who presented the gift (include date). Provide the estimate retail value of the gift in the United States at the time of acceptance or the appraised value, if known. If the employee recipient is interested in purchasing the gift, so indicate. A commercial appraisal plus cost of appraisal shall be annotated and a copy of the appraisal attached. If the recipient is interested in having the gift donated to an eligible public agency or nonprofit tax-exempt institution, that should be indicated here.

18(e)—The quantity for each line item should always be one. For example: three pairs of cuff links will be reported as three separate line items, 0001 thru 0003, each reflecting a quantity of one pair.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1988.

[FR Doc. 88–25698 Filed 11–7–88; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–3472–6]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule; notice of renewal of the Uniform Hazardous Waste Manifest form.

SUMMARY: Today's action renews the Uniform Hazardous Waste Manifest (UHWM) form without change and extends the expiration date to September 30, 1991. Today's notice also mandates the inclusion of a burden disclosure statement, prepared under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, with each Uniform Hazardous Waste Manifest form. The Agency is taking this action because the current manifest form expires on December 31, 1988. EPA and the Office of Management and Budget extended the period of use for the current manifest form from September 30, 1988 until December 31, 1988 (53 FR 37563, September 27, 1988). Today's notice also includes a technical correction for a citation to an OMB control number in § 262.20(a).

EFFECTIVE DATE: November 8, 1988.

ADDRESSES: Copies of the renewed form may be requested from the RCRA/Superfund Hotline toll-free at (800) 424–9346, or in Washington, DC call 382–3000.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll-free at (800) 424–9346, or in Washington, DC call 382–3000. For information on specific aspects of today's notice, contact Emily Roth, (202) 382–4777, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1984, in a joint rulemaking effort, the U.S. Environmental Protection Agency (EPA) and the Department of Transportation (DOT) promulgated the Uniform Hazardous Waste Manifest and required its use for all regulated shipments of hazardous waste. EPA's Resource Conservation and Recovery Act (RCRA) regulations require generators who transport, or offer for transportation, hazardous waste for off-site treatment, storage or disposal to prepare a manifest which must accompany the waste.

II. Technical Amendments to the Uniform Hazardous Waste Manifest Form

The Agency is making the following technical amendments effective with today's notice. The Agency has good cause for finding that public comment on these amendments is unnecessary pursuant to 5 U.S.C. 553(b)(B), because the amendments will not change any substantive requirements of the current regulations.

A. Extension of Manifest Form Expiration Date

The Agency is renewing the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A) without substantive change and with a new expiration date of September 30, 1991. If the Agency determines there is a need to revise the manifest form, at a later date, an Advance Notice of Proposed Rulemaking (ANPRM) will be published in the **Federal Register** inviting comment from the public and the regulated community.

B. Paperwork Reduction Act Regulations Require Inclusion of a Burden Disclosure Statement

The U.S. Office of Management and Budget (OMB) added § 1320.21, "Agency Display of Estimated Burden," to 5 CFR Part 1320 on May 10, 1988. This section requires Agencies to indicate on each instrument for the collection of information, i.e., form, the estimated average burden hours per response, together with a request that the public direct any comments concerning the accuracy of this burden estimate or suggestions for reducing the burden itself to the Agency and to OMB's Office of Information and Regulatory Affairs (OIRA). This is intended to facilitate Agency management of its collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the paperwork reduction process. This rule will not impose any new information collection requirements.

OMB is not concerned that biased or skewed responses will be received from the public (e.g., only those taking longer than average would respond). The goal of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is to minimize the paperwork burden on the public; therefore, OMB needs the input of those respondents who are most burdened by a collection of information.

In order to comply with this new OMB regulation, EPA is requiring that a burden disclosure statement be included with the renewed Uniform Hazardous Waste Manifest form. The burden disclosure statement may be included on the manifest form, attached to the manifest form, or included in the instructions to the manifest form. EPA has estimated the burden associated with filling out the manifest to be 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage, and disposal facilities. The burden disclosure statement required with each Uniform Hazardous Waste Manifest form is as follows:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering

data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Technical Amendment of OMB Control Number

The Agency is making a technical correction to the generator regulations in § 262.20(a). That paragraph contains an inaccurate reference to the OMB control number for the UHWM; today's regulations correct it. This correction will not change any requirements of the regulations, it will simply make them more accurate and thus more useful.

III. Regulatory Impacts

The regulation promulgated today is merely a renewal of the Uniform Hazardous Waste Manifest and so has no impact on the regulated community.

A. Executive Order 12291—Regulatory Impacts

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Since today's notice does not impose any substantive regulatory requirement on the regulated community, this notice is not a major rule subject to the Regulatory Impact Analysis requirements of Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities, because it merely involves the inclusion of a burden disclosure statement with the Uniform Hazardous Waste Manifest and extends the form's expiration date.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements; however, this rule does incorporate a new regulation under the Paperwork Reduction Act, 5 CFR 1320.21, requiring the inclusion of a statement with all Federal forms, which estimates the paperwork burden sustained by the regulated community.

List of Subjects in 40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: November 1, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended, (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

2. Section 262.20 is amended by revising the OMB control number in paragraph (a) to read as follows:

§ 262.20 General requirements.

(a) * * * OMB control number 2050–0039 * * *

* * * * *

3. The Uniform Hazardous Waste Manifest Form in the Appendix to Part 262 is revised and text is added following the first manifest form to read as follows:

* * * * *

BILLING CODE 6560-50-M

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)*

Form Approved. OMB No. 2050-0039. Expires 9-30-91

UNIFORM HAZARDOUS WASTE MANIFEST

1 Generator's US EPA ID No. | Manifest Document No. | 2. Page 1 of | Information in the shaded areas is not required by Federal law.

GENERATOR

3. Generator's Name and Mailing Address

4. Generator's Phone ( )

A. State Manifest Document Number

B. State Generator's ID

5. Transporter 1 Company Name | 6. US EPA ID Number

C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name | 8. US EPA ID Number

E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address | 10. US EPA ID Number

G. State Facility's ID

H. Facility's Phone

11. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a.					
b.					
c.					
d.					

J. Additional Descriptions for Materials Listed Above

K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; **OR**, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev. 9-88) Previous editions are obsolete.

BILLING CODE 6560-50-C

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

* * * * *

BILLING CODE 6560-50-M

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039 Expires 9-30-91

UNIFORM HAZARDOUS WASTE MANIFEST
(Continuation Sheet)

21 Generator's US EPA ID No. | Manifest Document No.

22 Page | Information in the shaded areas is not required by Federal law

23 Generator's Name

L. State Manifest Document Number

M. State Generator's ID

24 Transporter ____ Company Name | 25 US EPA ID Number

N. State Transporter's ID

O. Transporter's Phone

26 Transporter ____ Company Name | 27 US EPA ID Number

P. State Transporter's ID

Q. Transporter's Phone

GENERATOR

28 US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	29 Containers No.	29 Containers Type	30 Total Quantity	31 Unit Wt./Vol.	R Waste No.
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					

S. Additional Descriptions for Materials Listed Above

T. Handling Codes for Wastes Listed Above

32. Special Handling Instructions and Additional Information

TRANSPORTER

33 Transporter ____ Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Date (Month Day Year)

34 Transporter ____ Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Date (Month Day Year)

FACILITY

35 Discrepancy Indication Space

EPA Form 8700-22A (Rev. 9-88) Previous edition is obsolete

[FR Doc. 25774 Filed 11-7-88; 8:45 am]

BILLING CODE 6560-50-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-564; RM-5846]

Radio Broadcasting Services; Augusta, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Augusta, Arkansas, and modifies the Class A license of Prescott-McGuire Broadcasting, Inc. for Station KABK-FM, as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Augusta are 35-11-00 and 91-20-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-564, adopted September 29, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Augusta by deleting Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-25749 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-127; RM-5824]

Radio Broadcasting Services; Lebanon, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A to Lebanon, Tennessee, as that community's second FM service, at the request of William O. Barry. Channel 255A requires a site restriction of 9.6 kilometers (6.0 miles) north of the city at coordinates 36-17-28 and 86-16-14. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988; the window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-127, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 255A at Lebanon.

Steve Kaminer,

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

[FR Doc. 88-25750 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-22; RM-6114]

Radio Broadcasting Services; Lobelville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C2 for Channel 232A at Lobelville, Tennessee, and modifies the license of Station WIST(FM) to specify operation on the higher adjacent channel, as requested by Coleman Broadcasting Company, Inc. This action will provide Lobelville with a first wide coverage area FM service. The station's current transmitter site can be used for the channel change, at coordinates 35-46-21 and 87-52-05 With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-22, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee by deleting Channel 232A and adding Channel 233C2 at Lobelville.

Steve Kaminer,

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

[FR Doc. 88-25751 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-187; RM-6215]

Radio Broadcasting Services; Centerville, UT

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document substitutes Channel 289C1 for Channel 289C2 at Centerville, Utah, and modifies the license of Station KCGL(FM) to specify operation on the higher class co-channel, as requested by Radio Property Ventures. The substitution could provide the community with expanded service of its first wide coverage area FM station. The station's current transmitter site can be used at coordinates 40-48-29 and 111-53-21. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-187, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Utah, by deleting Channel 289C2 and adding Channel 289C1 at Centerville.

Steve Kaminer,

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

[FR Doc. 88-25752 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-620; RM-6098]

Radio Broadcasting Services; Deer Park, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Deer Park, Washington, and modifies the license of Station KAZZ(FM) to specify operation on the higher class co-channel, at the request of Barbara L. Kazmark. The channel provides Deer Park with its first wide coverage area FM service. The substitution requires a site restriction of 25.8 kilometers (16.0 miles) northeast of the community, at coordinates 48-08-35 and 117-15-59. Canadian concurrence has been obtained to operate the station as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-620, adopted October 6, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by deleting Channel 296A and adding Channel 296C2 at Deer Park.

Steve Kaminer,

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

[FR Doc. 88-25753 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

Interim Changes to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: On September 29, 1988, the United States Government and eleven other governments signed an agreement "On Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station." Article 16 of this international agreement provided for a "Cross-Waiver of Liability." This rule provides a cross-waiver of liability clause for use in certain contracts related to the Space Station.

DATES: Effective September 29, 1988. Comments are due not later than December 8, 1988.

ADDRESS: Comments should be addressed to: W.A. Greene, Chief, Regulation Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1988, the United States Government and eleven other governments signed an agreement "On Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station." Article 16 of this international agreement provided for a "Cross-Waiver of Liability." In effect, this international agreement and other related agreements obligated each of the governments to adhere to the cross-waiver of liability and to extend the cross-waiver of liability to its contractors and subcontractors, among other persons and entities, by contract or otherwise.

Since the obligation of the United States Government under the international agreements is effective now, it is an urgent and compelling matter to place the cross-waiver of liability clause in appropriate NASA contracts and subcontracts. Therefore, this rule is issued as an interim rule to require its immediate use.

Impact

The Director, Office of Management and Budget (OMB), by memorandum

dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because we do not believe that a substantial number of small entities, who are NASA contractors or subcontractors, will have valuable property exposed to damage, or actually damaged, during Space Station related work. Moreover, these small entities would obtain the protection of the cross-waiver for damage they cause during the conduct of such work, but the probability of such damage occurring is small and the economic impact of this protection would appear to be not significant to a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. This rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Part 1828 is amended by adding section 1828.001 to read as follows:

1828.001 Definitions.

"Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to—

(a) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and

(b) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

3. Subpart 1828.3 is amended by adding section 1828.373 to read as follows:

1828.373 Clause for cross-waiver of liability for Space Station activities.

(a) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of Protected Space Operations (see section 1828.001). The contracting officer shall modify all other such existing contracts of $100,000 or more as soon as practicable to include the clause.

(b) The contracting officer may insert the clause at 1852.228–76 in contracts, new-work modifications or extensions to existing contracts and solicitations under $100,000 when the work is performed in support of Protected Space Operations. The use of the clause would be appropriate in contracts under $100,000, particularly when it is likely that such a contractor or subcontractor will have its valuable property exposed to risk of damage caused by other Space Station participants involved in Protected Space Operations.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1852 is amended by adding section 1852.228–76 to read as follows:

1852.228–76 Cross-waiver of liability for Space Station activities.

As prescribed in 1828.373, insert the following clause:

Cross-Waiver of Liability for Space Station Activities (September 1988)

(a) The objective of this clause is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability should be broadly construed to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.

(2) The term "damage" means:

(i) bodily injury to, or other impairment of health of, or death of, any person;

(ii) damage to, loss of, or loss of use of, any property;

(iii) loss of revenue or profits; or

(iv) other direct, indirect or consequential damage.

(3) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) The term "Partner State" means the Governments of Belgium, Canada, Denmark, France, Italy, Germany, Japan, Netherlands, Norway, Spain, and the United Kingdom of Great Britain and Northern Ireland. It includes a Cooperating Agency of a Partner State and the National Space Development Agency of Japan. (The currently designated Cooperating Agencies are the Ministry of State for Science and Technology of Canada, the European Space Agency and the Science and Technology Agency of Japan.)

(5) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to:

(i) research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services.

(ii) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" means:

(i) a contractor or subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier;

(ii) a user or customer of a Partner State or of the United States Government, at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The term "contractors" and "subcontractors" include suppliers of any kind.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) below, each related entity of the United

States Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations, against (1) the Contractor; (2) the Contractor's contractors or subcontractors at any tier; and (3) the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) above, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner State; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government; and (4) except as provided for in paragraph (h)(1) below, the employees of any of the entities identified in paragraph (d)(1) through (3) above.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4), above, except as provided for in paragraph (h)(1) below.

(f) This cross-waiver in paragraphs (c), (d), and (e) above shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c), (d), and (e) above applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the *Convention on International Liability for Damage Caused by Space Objects* where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities;

(2) claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(3) claims for damage caused by willfull misconduct; and

(4) intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder where the work is to be performed in support of Protected Space Operations.

(End of clause)

[FR Doc. 88-25670 Filed 11-7-88; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to amend the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule increases the commercial allocation for the Atlantic migratory group of king mackerel for the current fishing year from 2.60 to 2.866 million pounds. The intended effect of this rule is to permit commercial harvesters access to the amount of Atlantic migratory group king mackerel allocated to them by the regulations.

EFFECTIVE DATES: This rule is effective from November 3, 1988 through February 1, 1989.

ADDRESS: Copies of documents supporting this action may be obtained from, and comments may be mailed to Mark F. Godcharles, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king and Spanish mackerel fisheries are managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP and implementing regulations, the Councils and NOAA established a commercial allocation for the Atlantic migratory group of king mackerel of 2.60 million pounds for the current fishing year, April 1, 1988, through March 31, 1989 (53 FR 25611, July 8, 1988).

For this 1988/89 fishing year, commercial and recreational fisheries for the Atlantic group of king mackerel are experiencing closures and zero bag limits for the first time. Prior to this, the separate commercial and recreational allocations established for the Atlantic group of king mackerel under Amendment 1 to the FMP (August 1985) had never been reached, except for the recreational fishery during the 1985/86 fishing year. At that time, zero bag limits were not implemented, however, because the allocation was reached too late in the fishing year to effect a timely closure.

This year's 28 percent reduction in total allowable catch (TAC) for the Atlantic group of king mackerel lowered commercial and recreational allocations for the 1988/89 fishing year to catch levels experienced during the preceding fishing year. As a result, the recreational allocation was reached and zero bag limits were implemented on October 17, 1988 (53 FR 40231, October 14, 1988), and a November 1988 closure for the commercial fishery is expected. The Councils reduced allocations as recommended in the 1988 stock assessment because (1) of an apparent decrease in spawning stock biomass, (2) fishing mortality appeared to be at or slightly above full exploitation rates, and (3) catch-per-unit-effort data suggested a decline in spawning stock abundance. Although these actions prohibiting harvest were anticipated by the Councils, their occurrance so early in the second half of the fishing year was not.

An analysis of current and historic landing trends indicates that commercial fishermen in the northern part of the management area will be negatively impacted by the anticipated early closure of the Atlantic group commercial fishery in early to mid-November. Approximately 60 percent of the commercial king mackerel catch off North Carolina, South Carolina, and Georgia is taken in the fall (September-December), during the second half of the fishing year. North Carolina commercial fishermen over the past 3 fishing years have produced about 94 percent of these fish (1985/86: 572,578 pounds; 1986/87: 757,877 pounds; 1987/88: 985,619 pounds).

NMFS' most recent monitoring report indicates 91 percent (2,362,800 pounds) of the 2,600,000 pounds commercial allocation has been reported as landed through October 21, 1988. Approximately 406,000 pounds (17 percent) were taken in the northern part of the management area; the remainder (1.8 million pounds or 75 percent) was taken primarily off the Florida southeast coast. Most of the remaining allocation

of 237,200 pounds probably will be taken in the area off North Carolina because the commercial fishing season for Atlantic group king mackerel off southeast Florida is essentially over by September, and the boundary separating the Atlantic group moves to the Volusia/Flagler County line in northeast Florida beginning November 1.

Recent NMFS estimates of the 1988 catch indicate that 265,788 pounds (10.2 percent of the commercial allocation) of recreationally caught Atlantic group king mackerel are reported in NMFS commercial landings as a consequence of having been sold. An estimated 70,295 pounds were captured during recreational tournaments and sold. According to NMFS statisticians, the remaining 195,493 pounds has been double counted, i.e., this amount has been included in both the recreational and commercial landing's totals. If this inequity is not resolved this season by emergency action, commercial fisheries in the northern part of the management area will not exceed 378,000 pounds for the 1988/89 fishing year at the time of closure. This would constitute a 54 percent reduction in catch in comparison to the average landings for the past three fishing seasons (827,416 pounds) and a 64 percent reduction from last season's catch (1,049,396 pounds).

The Secretary has elected to temporarily rectify this situation through emergency action to offset negative impacts upon commercial fisheries in the northern part of the management area sustained this fishing year. Testimony and correspondence received from mackerel fishermen indicate that most of their income during the last quarter of the year is derived from the commercial king mackerel fishery. Depriving the commercial fishermen not only of 54–64 percent of their historic catch, but also much of their quarterly income, may have severe and long-lasting economic and social consequences.

By this emergency interim rule, the Secretary is adding 266,000 pounds to the commercial allocation for Atlantic group king mackerel. The Councils will be requested to address this and other problems through an FMP amendment. The counting of recreationally caught Gulf group king mackerel against the commercial allocation was addressed by the Councils in Amendment 1 to the FMP, and the commercial share of TAC was adjusted accordingly by 2 percent to account for king mackerel recreationally caught in the Gulf of Mexico and sold.

Because of the counting of Atlantic group king mackerel against both the recreational and commercial allocations, this action will result in only a minor (70,295 pounds) increase in the TAC of such king mackerel. This amount represents no significant increased risk to the resource because TAC is still well within the range of the acceptable biological catch for Atlantic group king mackerel approved by the Councils. The minimal increased risk is outweighed by the social and economic benefits of this action.

In accordance with section 305(e)(3)(B) of the Magnuson Act, this emergency rule will remain in effect for not more than 90 days after the date of publication. Upon agreement of the Secretary and the Councils, this emergency rule may be promulgated for one additional period of not more than 90 days. This emergency rule will restore to the commercial allocation for Atlantic group king mackerel and amount of fish intended to be available for commercial harvesters and thereby preclude a premature closing of the commercial fishery for Atlantic group king mackerel.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Secretary has determined that because the commercial allocation in the Atlantic king mackerel fishery is in jeopardy of premature closure, and because of the severe economic impact a premature closure of the commercial king mackerel would have on the commercial king mackerel fishery off North Carolina, South Carolina and Georgia, it is impracticable and contrary to the public interest to provide notice and opportunity for comment under the provision of section 553(b)(B) of the Administrative Procedure Act.

The Assistant Administrator also finds that because this is a substantive rule which relieves a restriction, the 30-day delayed effectiveness provisions of the Administrative Procedure Act do not apply.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

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

This rule does not contain policies which federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

NOAA concluded that, to the maximum extent possible, the FMP, as amended, is consistent with the coastal zone management programs of those adjoining States that have coastal zone management programs. Because this rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP, as amended, and earlier consistency determinations, a new consistency determination is not required.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: November 3, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

§ 642.21 [Amended]

2. In § 642.21, effective from November 3, 1988 through February 1, 1989, in paragraph (a)(2), the number "2.60" is removed and the number "2.866" is added in its place.

[FR Doc. 88-25768 Filed 11-3-88; 1:46 pm]
BILLING CODE 3510-22-M

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50 CFR Part 644

[Docket No. 81025-8225]

Atlantic Billfishes

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the regulations for the Atlantic billfish fishery. This rule provides a period of 60 days for a person to purchase or sell a billfish that was possessed by a seafood dealer or processor prior to October 28, 1988, the effective date of the billfish

regulations. The intended effect is to relieve a restriction and conform to the intent of the Fishery Management Plan for Atlantic Billfishes (FMP).

EFFECTIVE DATE: October 28, 1988, through December 26, 1988.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Atlantic billfish fishery is managed under the FMP under authority of the Magnuson Fishery Conservation and Management Act. Regulations to implement the FMP were published September 28, 1988 (53 FR 37765). The effective date of the regulations is October 28, 1988, except for sections dealing with the documentation of billfish possessed by seafood dealers and processors (§§ 644.7(g) and 644.24(b)), which are not effective until December 27, 1988 (or a later date, depending on when the Office of Management and Budget approves the collection-of-information requirement of those sections). The effectiveness of these sections was delayed to enable a seafood dealer or processor to dispose of frozen or processed billfish possessed prior to October 28, 1988 and not accompanied by documentation required by the regulations that it was harvested from an area other than its management unit as defined in the regulations. However, because of an administrative oversight, the regulations do not exempt the sale of such billfish from the prohibition on sale of all billfish taken from their management units (the prohibition of sale is effective October 28, 1988). This rule corrects the regulations published on September 28 and specifically authorizes the sale, prior to December 27, 1988, of billfish possessed before October 28, 1988 by a seafood dealer or processor, as was intended in the FMP.

Other Matters

This final rule, technical amendment, is issued under 50 CFR Part 644 and complies with E.O. 12291.

Because this rule is a technical correction and clarification of existing regulations and because this is a substantive rule of limited duration that relieves a restriction, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and that under 5 U.S.C. 553(d)(1) the effective date need not be delayed for 30 days.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule is minor and technical in nature and therefore is not a major rule under E.O. 12291. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

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

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 1, 1988.

William Matuszeski,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 644 is amended as follows:

PART 644—ATLANTIC BILLFISHES

1. The authority citation for Part 644 continues to read as follows:

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

§ 644.7 [Amended]

2. In § 644.7(e), to be effective from October 28, 1988, through December 26, 1988, is amended by adding at the end of the text, a comma and the phrase "except as specified in § 644.24(c)".

3. In § 644.24, to be effective from October 28, 1988, through December 26, 1988, a new paragraph (c) is added to read as follows:

§ 644.24 Restrictions on sale.

* * * * *

(c) Paragraph (a) of this section notwithstanding, a billfish possessed by a seafood dealer or processor before October 28, 1988, may be purchased, bartered, traded, or sold in any State through December 26, 1988.

[FR Doc. 88–25731 Filed 11–3–88; 9:47 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 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

Agricultural Marketing Service

7 CFR Part 989

Expenses and Assessment Rate for Marketing Order 989; Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 989 for the 1988–89 fiscal year instituted under the marketing order for raisins produced from grapes grown in California. Funds to administer Marketing Order 989 are derived from assessments on handlers. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses was prepared by the Raisin Administrative Committee (committee) and submitted to the U.S. Department of Agriculture for approval.

The members of the committee are handlers and producers of regulated raisins. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. Because that rate is applied to actual shipments, it must be established at a level which will produce sufficient income to pay the committee's expected expenses.

DATE: Comments must be received by November 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jacobs, Marketing Specialist, Marketing Order Administration Branch, Room 2526, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order, and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

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

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. Because that rate is applied to actual shipments, it must be established at a level which will produce sufficient income to pay the committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the expenses and assessment rate approval must be expedited in order that the committee will have funds to meet it's obligations.

The Raisin Administrative Committee met October 4, 1988, and unanimously recommended 1988–89 expenditures of $435,000 and an assessment rate of $1.50 per ton of free tonnage raisins shipped under M.O. 989. In comparison, 1987–88 expenditures were $325,000 and the assessment rate was $1.25. Major expenditure categories in the 1988–89 budget are $126,400 for executive salaries, $85,000 for office personnel salaries, and $60,000 for committee travel. Comparable budgeted expenditures for the 1987–88 fiscal year were $117,000, $36,000, and $35,000, respectively. The estimated assessable tonnage of 290,000 tons would provide adequate funds for budgeted expenses for the 1988–89 crop year.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. These costs would be significantly offset by the benefits derived from the operation of

the marketing order. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

From the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the expenses and assessment rate approval for this program must be expedited. The committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 989

Marketing Agreement and Order, California, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.339 is added to read as follows:

§ 989.339 Expenses and assessment rate.

Expenses of $435,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of $1.50 per ton of assessable raisins is established for the crop year ending July 31, 1989. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: November 3, 1988.

William J. Doyle,

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

[FR Doc. 88–25762 Filed 11–7–88; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Supplemental proposed rule; resolicitation of comments.

SUMMARY: Final regulations (12 CFR Parts 614, 615, and 618) on borrowers rights were published on September 14, 1988 (53 FR 35427). The regulations became effective on October 14, 1988. See Notice of Effective Date published elsewhere in this issue of the **Federal Register**. The borrower rights include, among others, certain disclosure requirements on borrowers' loans specified in the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987 (the Act).

After publication of the final regulations, the Farm Credit Administration (FCA) received comments from the Farm Credit Corporation of America (FCCA) and individual Farm Credit System institutions that the institutions could not presently comply with two portions of the disclosure regulations concerning the effective interest rate. Furthermore, the comments expressed the view that even if compliance were possible at some time in the future, such compliance would create unnecessary costs for the institutions and result in disclosures that would not be meaningful to borrowers. Therefore, in light of these concerns, pending further action on the regulations, the Farm Credit Administration Board (Board) deferred the following portions of the regulations: (1) The language in 12 CFR 614.4367(c)(1) which states "* * *, including the effective interest rate;" and (2) 12 CFR 614.4367(d)(1). See Notice of Effective Date published elsewhere in this issue of the **Federal Register**. The FCA solicits comments on the issues related to the deferred portions of the regulations and on the proposed changes to the regulations set forth below.

DATE: Written comments must be submitted on or before December 8, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020. TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The deferral of the portion of 12 CFR 614.4367(c)(1) and of 12 CFR 614.4367(d)(1) means that pending further action by the FCA Board, lenders are not presently required to disclose to borrowers the new effective interest rate which has been changed because of a change in the stated contract rate (as would be required by the deferred portion of 12 CFR 614.4367(c)) or because of a change in the stock or participation certificates that borrowers are required to own (as would be required by 12 CFR 614.4367(d)(1)). However, the deferral does not exempt lenders from compliance with the remainder of the borrower rights regulations which were effective as of October 14, 1988. Lenders are presently required to disclose to prospective borrowers, among other things, the current interest rate, the amount and frequency by which an adjustable interest rate may change, and the current effective interest rate which is the interest rate adjusted to take into consideration any stock or participation certificate purchase requirement and loan origination charges (12 CFR 614.4367(a)). When an interest rate is adjusted on an outstanding loan, a lender must disclose the new interest rate, the date on which the rate is effective, and a statement of any factors other than standard adjustment factors which were taken into account in establishing the new rate (12 CFR 614.4367(c)). In addition, whenever the stock or participation certificate requirement is changed, thus modifying the effective interest rate, the lender must notify the borrower of the date that the new rate is effective and a statement of the actions that resulted in the new effective interest rate (12 CFR 614.4367(d) (2) and (3)).

Throughout the development of the borrower rights regulations, FCA has balanced the rights to which borrowers are entitled against unnecessary costs to the Farm Credit institutions. The deferral will enable FCA to further evaluate the compliance and cost problems identified by lenders while still ensuring that borrowers receive the other required disclosures.

The compliance problems apparently stem primarily from a change in the definition of "effective interest rate". Prior to the 1987 amendments to the Act, the regulations defined "effective interest rate" to take into consideration stock or participation certificates as a percentage of the initial net proceeds of the loan, but did not require the inclusion of loan origination charges. The 1987 amendments to the Act altered the definition of "effective interest rate" by requiring disclosure, not later than the time of loan closing, of "the effect, as shown by a representative example or examples, of *any loan origination charges* or purchases of stock or participation certificates on the effective rate of interest." 12 U.S.C. 2199(a)(3) (emphasis added). Thus, the new definition of "effective interest rate" now includes the impact of any loan origination charges. Pursuant to the 1987

amendments and the subsequent changes in the regulations, institutions must now include loan origination charges when calculating and dealing with the effective interest rate. Comments have asserted that to do so may result in great cost to the institutions, especially concerning subsequent disclosures on loans which existed prior to the regulations becoming effective.

Disclosure of New Effective Interest Rate Based on Change in Stated Contract Rate—Deferred Portion of 12 CFR 614.4367(c)(1)

FCCA commented on the deferred portion of 12 CFR 614.4367(c) by stating that there is a need to receive comments on the issue of requiring disclosure of a change in the effective interest rate because of a change in the stated contract rate. FCCA expressed concern that many Farm Credit Banks do not presently have loan origination charges in their data bases. Thus, they will not be able to comply with the deferred portion of 12 CFR 614.4367(c)(1).

One lender supported the FCCA's comments by stating that loan origination charges had not yet been included in the data base. It appears that, if the lenders are not able to comply with the deferred portion of 12 CFR 614.4367(c)(1) because they do not have loan origination charges in their data bases as the lenders and FCCA claim, then they may also be unable to comply with 12 CFR 614.4367(d)(1), which is discussed below.

One Farm Credit Bank (FCB) expressed the concern that the requirement of the deferred portion of 12 CFR 614.4367(c) would cause a tremendous burden from both an accounting and data processing standpoint. The FCB claims that this subsequent disclosure would be an unnecessary one as long as the requirement of, among other things, the disclosures at the time of loan closing as prescribed by 12 CFR 614.4367(a) are in place.

Another lender stated that even *partial* compliance with the deferred portion of the regulations (i.e. manually inputting the loan origination charges) would cost approximately $750,000. In addition to the costs involved, this lender questioned the meaningfulness of this disclosure by referring to the Federal Reserve Board's implementing regulations for the Truth in Lending Act (12 CFR Part 226) which do not require similar subsequent disclosures of changes in the annual percentage rate in variable rate transactions.

FCA is now reconsidering whether the deferred portion of 12 CFR 614.4367(c)(1) is necessary to provide meaningful and timely disclosures to borrowers if they receive all other disclosures required by the regulations. One factor to be addressed is whether compliance with the deferred portion of the regulation would result in significant extra costs to the institutions. Therefore, by proposing to delete the deferred portion of 12 CFR 614.4367(c)(1), FAC solicits additional comments on these issues.

Disclosure of New Effective Interest Rate Based on Change in Stock or Participation Certificate Requirement—12 CFR 614.4367(d)(1)

Although only two comments specifically addressed compliance with the requirements of 12 CFR 614.4367(d)(1), FCA believes that it is appropriate to address this issue also. One FCB said that for the same reasons articulated concerning the compliance and costs problems of the deferred portion of 12 CFR 614.4367(d)(1), FCA should also consider amending 12 CFR 614.4367(d)(1).

The other commenter stated that in addition to the deferred portion of 12 CFR 614.4367(c)(1), the requirement found in 12 CFR 614.4367(d)(1) should be reexamined, particularly in light of the fact that Farm Credit System lenders are presently examining and redesigning their capitalization bylaws to conform with the capital adequacy regulations. The commenter suggested that instead of informing borrowers of the new rate, subsequent disclosures should include either a standardized example or a copy of the formula that the borrower could use to compute his own rate.

FCA invites comment on whether informing borrowers of a change in stock or participation certificate purchase requirements is a meaningful disclosure without a calculation of the new effective interest rate. FCA proposes that 12 CFR 614.4367(d)(1) be amended accordingly. Where the lender is able to provide the new effective interest rate (*e.g.*, on loans, closed after the effective date of the regulations, which must include information on the loan origination charges pursuant to 12 CFR 614.4367(a)(3)), it may be easier for the lender to provide the actual new rate. Where such loan origination charges are not available or easily included in a lender's data base, the lender may satisfy the requirements of this regulation by notifying the borrower of the impact of the change on the effective interest rate. Thus, a representative example may be used to inform the borrower how his effective interest rate has been changed by the change in the stock or participation certificate requirement. FCA solicits comments on this issue.

In addition, FCA solicits comments in general on the requirements of 12 CFR 614.4367(d). Specifically, FCA solicits comments on the impact of, meaningfulness of, and circumstances under which such disclosures would be made.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, Part 614 of Chapter VI of the Code of Federal Regulations is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: Secs. 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 4.37, 5.9, 5.17(a)(10); 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Section 614.4367 is amended by revising paragraphs (c)(1) and (d)(1) to read as follows:

§ 614.4367 Required disclosures—in general.

* * * * *

(c) * * *

(1) The new interest rate on the loan;

* * * * *

(d) * * *

(1) The impact on the effective interest rate by disclosing the new effective interest rate or by a representative example;

* * * * *

Dated November 3, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-25828 Filed 11-7-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-301B]

Concrete and Masonry Construction Safety Standards; Lift-Slab Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period and period for requesting an informal hearing.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notice of proposed rulemaking which OSHA issued on September 15, 1988 (53 FR 35972) on lift-slab construction. This notice also restates the procedures for submitting hearing requests.

DATE: Written comments and requests for a hearing must be postmarked by December 14, 1988.

ADDRESSES: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Docket S–301B, Room N–2634, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–7894. All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued a Notice of Proposed Rulemaking on September 15, 1988 (53 FR 35972) which proposed to revise the safety standards for lift-slab construction. Interested parties were given until November 14, 1988, to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public hearing on the proposal.

OSHA has received requests from interested persons to extend the comment period to allow ample opportunity for a complete and full response to the proposed provisions and the specific issues raised in the proposal. To ensure the fullest participation of interested persons, OSHA is hereby extending the period until December 14, 1988.

In addition, interested persons have until December 14, 1988, to request an informal hearing on the proposal. The notice of proposed rulemaking sets forth five conditions that objections and hearings requests must satisfy. It is important that hearing requests clearly indicate the subjects to be addressed at the hearing and the evidence to be presented by the party requesting the hearing. Therefore, OSHA is restating the conditions for submitting objections and hearing requests.

Objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;
2. The objections and hearing requests must be postmarked by December 14, 1988;
3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken, or concerning which a hearing request is made, and must state the grounds therefor;
4. Each objection and hearing request must be separately stated and numbered; and
5. The objections and hearings requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (49 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 3rd day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–25776 Filed 11–7–88; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3285–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision would extend the compliance schedule for Georgia-Pacific Corporation's (Georgia-Pacific) two paper varnish coating lines located in Will County, Illinois. This revision would allow Georgia-Pacific additional time to reformulate its varnishes to high solids, or to water-base coatings.

USEPA today is proposing to disapprove this SIP revision because the requested compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA Policy.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 8, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, IL 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, IL 62706

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) U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for two of Georgia Pacific's paper coating varnish lines. These lines are located in Will County, Illinois, which is part of the Chicago ozone demonstration area. This proposed revision is in the form of a May 5, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB), IPCB 82–142. It grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule. Georgia-Pacific is located in Will County, which is currently designated attainment for ozone but (as stated above) within the Chicago ozone nonattainment area.

Under the existing federally approved SIP, each varnish coating line is subject to the emission control requirements contained in Rule 205 Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(n)(1)(C), adopted February 21, 1980, limits volatile organic compound (VOC)

emissions to 2.9 pounds VOC per gallon of coating. Final compliance was required on December 31, 1982.

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an extended compliance schedule for two of Georgia-Pacific's varnish coating lines to December 31, 1984.

Georgia-Pacific manufactures multicolor paper labels, used primarily for canned food products. Included in this facility are two Christensen varnishers that are used to apply a high-gloss protective varnish coating onto printed labels.

In the March 20, 1984, **Federal Register** (49 FR 10277), USEPA proposed to disapprove this proposed SIP revision because the Illinois Ozone SIP backed an approved attainment demonstration for the Chicago nonattainment area. Since the publication of the March 20, 1984, Notice of Proposed Rulemaking, IEPA has submitted a revised ozone attainment demonstration, which USEPA proposed to approve on August 15, 1984 (49 FR 32601). However, USEPA proposed to disapprove the State's attainment demonstration (52 FR 26404, July 14, 1987).

Proposed Actions

USEPA has determined that Georgia-Pacific's schedule to achieve final compliance by December 31, 1984 is not approvable based on the Clean Air Act and USEPA's policy on compliance date extensions. In particular, the State has not adequately research the compliance status of other similar sources to determine if compliance by the original deadline was reasonable. Nor has the State demonstrated that the compliance date extension will not interfere with RFP. This source is located in the Chicago nonattainment area which lacks an approved attainment demonstration. Therefore, USEPA is again proposing to disapprove Georgia-Pacific's compliance date extension request. A more detailed discussion of the rationale for proposing disapproval of the State submission and of the Clean Air Act and USEPA policy related to compliance dae extension appears in Appendix A of this notice.

USEPA is providing a 30-day comment period on this notice or proposed rulemaking. Public comments received on or before December 8, 1988 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this disapproval will not have a significant economic impact on a substantial number of small entities because it applies only to Georgia-Pacific.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 30, 1987.

Editorial Note: This document was received at the Office of the Federal Register November 3, 1988.

Robert Springer,

Acting Regional Administrator.

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

Appendix A

This SIP revision, if approved by EPA, would allow the source an extension of time for complying with the SIP limit. EPA has a policy of approving compliance date extensions, but only under certain circumstances. The following explains the relevant provisions of the Clean Air Act and EPA's policy.

Under the Clean Air Act, a SIP must "provide [] for the attainment of [the] primary [National ambient air quality standard ("NAAQS)] as expeditiously as practicable but [in general] in no case later than three years from the date of approval of such plan". 42 U.S.C. 7410(a)(2) (A)–(B). For areas that had not, as of August 7, 1977, attained the primary standard, the SIP must provide for attainment "as expeditiously as practicable", but, in the case of the primary NAAQS, no later than December 31, 1982, or, under certain circumstances, December 31, 1987. 42 U.S.C. 7502(a).

EPA has reiterated these statutory requirements in a regulation, 40 CFR 51.110, which states, "Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable", but no case later than the statutory attainment date.

In addition, the SIP must provide for maintenance of the NAAQS for the period following attainment. 42 U.S.C. 7410(a)(2)(B). It should be noted that some EPA-approved SIPs provide for more pollution reductions than the SIP's supporting analyses show are necessary to attain and maintain the air quality standards. These excess reductions are known as the margin of attainment.

The Clean Air Act further provides that revisions to an approved SIP are permissible only if they do not interfere with attainment by the applicable date, and maintenance thereafter. 42 U.S.C. 7410(a)(3).

In addition to providing for attainment and maintenance, the SIPs in areas that had not attained by August 7, 1977, must "provide for the implementation of all reasonably available control measures ["RACM"] as expeditiously as practicable", and "require, in the interim [period before attaintment], reasonable further progress ["RFP"] * * * including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology ['RACT']." 42 U.S.C. 7502(b) (2)–(3).[1] Because EPA considers RACM to include RACT, these requirements mean that sources must adopt RACT as expeditiously as practicable. To determine RFP, the State typically identifies amounts of reduction expected in the years prior to attainment, and EPA determines whether these interim reductions are approvable as RFP. The amounts of reductions are known as the "RFP Line".

EPA generally has required sources to come into compliance within three years of the date the State adopted the regulation setting out the applicable requirements. EPA has viewed this period as expeditious.

Under long-standing EPA regulation, the State, in seeking EPA approval for a SIP or SIP revision, has the burden of proving that the statutory requirements are met. *See, e.g.,* 40 CFR 51.112(a) ("Each plan must demonstrate that * * * it [is] adequate to provide for the timely attainment and maintenance of the national standard").

Consistent with these statutory and regulatory provisions, EPA uses the following guidelines for allowing compliance date extensions greater than three years from the date of adoption of the SIP requirement by the State:

1.a. In an area with an approved SIP, EPA will approve a compliance date extension only if it represents expeditious action and does not interfere with the attainment date or the RFP line.

EPA will approve compliance date extensions in areas with approved SPIs [2] if the State demonstrates that the

[1] "Reasonable further progress" is defined as—annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions * * * and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required * * * 42 U.S.C. 7501(1).

[2] For present purposes, EPA does not consider an area to have an approved SIP if EPA, at one time, approved the SIP, but subsequently, (i) EPA issued a notice that the SIP failed to attain or maintain the

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extension represents action that is as expeditious as practicable. This policy is consistent with the requirements that sources put in place RACT as expeditiously as practicable, as discussed below. The criteria for determining whether action is expeditious are also discussed below.

In addition, the State must demonstrate that the extension does not, or did not, intefere with the date for attaining the ambient air standard, with the RFP line in the interim, or with maintenance thereafter. If the compliance date extension goes beyond the attainment date, EPA will view the extension as not interfering with attainment or maintenance only if the attainment margin is sufficient to accommodate the additional emissions.

This requirement is consistent with long-standing EPA policy. In the April 4, 1979 "General Preamble", EPA stated, "EPA must reject any individual requirement that would interfere with attaining and maintaining the NAAQS by the required deadline * * *" 44 FR 20373, col. 3. Similarly, a July 29, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, stated,

> For a State to secure EPA approval of a relaxation and continue overall approval status * * * the State would need to show that the SIP as a whole, despite the relaxation, would continue to 'provide for' attainment by the end of 1982 [or 1987, as the case may be].[3]

1.b. EPA will not approve compliance date extensions in areas that lack approved attainment demonstrations.

A SIP revision seeking a compliance date extension amounts to a relaxation of the SIP requirements because the company would be permitted to emit greater amounts of pollutants for a longer period. EPA may approve the SIP revision only if the State shows that the greater amounts of pollution will not interfere with attainment and maintenance of the NAAQS by the required date, and with RFP in the interim. The State cannot make this showing if it has not submitted an approvable attainment demonstration, identifying the attainment date and the RFP line. Accordingly, EPA cannot approve a compliance data extension in an area lacking an approved attainment demonstration. EPA made this policy clear when it proposed to disapprove compliance date extension requests for Georgia Pacific Corporation and six other sources in Illinois by notice dated March 20, 1984 (49 FR 10277).

2. In an area with an approved SIP, EPA will approve the compliance date extension only if it is consistent with the Clean Air Act requirements that SIPs provide for implementation of RACT as expeditiously as practicable.

As noted above, the Clean Air Act requires that SIPs for areas not in attainment of the NAAQS by August 7, 1977 must provide for the implementation of RACT as expeditiously as practicable. 42 U.S.C. 7502(b)(2). EPA has defined RACT as—

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[4]

Through the issuance of Control Technique Guidelines ("CTGs"), EPA has identified pollution control levels that EPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source of group of sources, the State typically adopts requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation, and States may develop case-by-case RACT determinations independently of EPA's recommendation. EPA will approve these RACT determinations as long as the State shows they will satisfy the Clean Air Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated.[5]

EPA will approve a compliance date extension only if the State demonstrates that the extension represents implementation of RACT as expeditiously as practicable. To make this demonstration, the State must show that (i) in fact the SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not reasonably available in time to meet the SIP compliance date, and (ii) the extension is for the shortest period that reasonably reflects the expected availability of the control technology. EPA will determine whether the State makes these demonstrations on a case-by-case basis, taking into account all the relevant facts and circumstances concerning each case.

In making these demonstrations, the State must make reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control, as appropriate. The State is free to consult informally with EPA to determine whether EPA has up-to-date information concerning the availability of particular coatings or other kinds of control. If EPA does not have up-to-date information, the State must undertake further efforts. Examples of these efforts include examining information that is or should be reasonably available to the State, including whether sources operating in the State that are in an industry comparable to the source at issue (*e.g.*, within the same CTG category) achieve compliance with the SIP, by the SIP approved compliance schedule, by using complying coatings, or other kinds of control, that the source could adopt. In addition, if the State participates in a formally established, multi-state pollution control group or commission, EPA presumes that the State has reasonable access to information concerning whether sources operating in the other States that are members of the group or commission use complying coatings, or other controls. Thus, the State must examine available information concerning sources in those other States. Reasonable efforts by the

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NAAQS (either a SIP call under 42 U.S.C. 7410(a)(2)(H) or a redesignation to nonattainment under 42 U.S.C. 7407) or a notice that the State failed to implement the SIP; (ii) the State failed to fulfill certain conditions in the SIP; (iii) the inventory of VOC emissions substantially changed so that the margin of attainment changed significantly; or (iv) monitoring data raised serious questions about the original prediction of attainment.

[3] In addition, in the April 4, 1979 "General Preamble" describing how EPA intended to implement provisions of the 1977 Clean Air Act, EPA stated that a SIP "relaxation"—*i.e.*, a SIP revision that allows increased emissions, as does a compliance date extension for the period following the SIP compliance date—would not be permitted in an area where the NAAQS was violated. 44 FR 20374, col. 2.

[4] 44 FR 53762 col. 1 (September 17, 1979)

[5] More specifically, EPA has described RACT and the obligations of the State as follows:

> Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds [*sic*] the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.
>
> However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In many cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.
>
> The presumptive norm is only a recommendation. For any source or group of sources, regardless of whether they fall within the industry norm, the State may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT based on the economic and technical circumstances of the particular sources being regulated.

State also include seeking information reasonably available to the source requesting the SIP revision, including, for example, contacting suppliers available to the source to determine if they have complying coatings or other controls; contacting trade associations to determine if they know of complying coatings or other controls; and reviewing trade publications containing information concerning complying coatings or other controls.

It seems appropriate for the source to make a showing that process changes, such as switching to low solvent coatings are not available when applying for a compliance date extension. If low solvent coatings (or other process changes) meeting the Control Technique Guideline (CTG)-recommended emission level are shown not to be feasible for a particular source, then the source should identify the lowest level of volatile organic compound (VOC) emissions that is available for that source or type of coating.

Assuming that a source has prepared an adequate showing that abatement ("add-on") controls are not feasible, an example of an action that a source might perform to demonstrate to the State that no complying coating is available would be for the company to place two consecutive advertisements in each of three leading paint trade journals (*e.g., Industrial Finishing, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal*) and describe the application and product specifications for a low solvent paint which they are seeking. This advertisement should solicit paint companies to provide a low VOC product meeting those specifications. The responses which the company receives could be provided to EPA as proof that this type of product does or does not exist. The advertisement in a trade journal would reach a wide number of paint producers, some of whom may have developed suitable low VOC products. When reporting the response to the advertisement to EPA, the State should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit.

Another example of an approach that a metal coater might use in demonstrating the unavailability of complying coatings for a particular product would be to contact a trade association which represents a large number of manufacturers of low VOC coatings (*e.g.*, the Powder Coating Institute). If such an association documents that none of its members can provide a low solvent complying coating for this product, then this trade association reply could be used to show that a reasonable effort had been made to find a complying product and that such a product apparently does not currently exist. If, through efforts such as those described above, the source makes a convincing demonstration that complying products are not available in the industry, State would not be required to make duplicative efforts.

If, after the reasonable efforts described above are expended, and the State finds that no complying coatings or other controls as appropriate are available, EPA itself may make an independent assessment of the availability of such coatings or controls and the compliance status of other sources in the same CTG category.

It should be noted that by notice dated November 24, 1987, EPA published a proposed program for addressing the expected failure of many areas of the country to attain the ozone NAAQS by the end of 1987 (52 FR 45046). Beginning May 26, 1988, EPA issued SIP calls under 42 U.S.C. 7410(a)(2)(H)—*i.e.*, notices that the SIP failed to attain or maintain the NAAQS—for many areas of the country. These SIP calls have the effect, for certain purposes, of converting an area with an approved attainment demonstration into an area lacking an approved attainment demonstration. Some of the notices of proposed rulemaking that refer to this Appendix concern compliance date extension requests for sources operating in some of those areas.

EPA is currently considering the effect of these SIP calls on pending and future SIP revision requests seeking compliance date extensions, as well as other SIP relaxations. The SIP calls represent a determination that the air quality is not in attainment and that the SIP does not provide for attainment. Current EPA policy, described above, generally precludes approval of relaxations such as compliance date extensions in such areas. EPA's November 24, 1987 notice proposed a program under which States would be required to submit new SIPs within the next few years providing for attainment.

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40 CFR Part 261

[SW-FRL-3472-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Marquette Electronics, Incorporated, Milwaukee, Wisconsin, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATE: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until December 23, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by November 23, 1988. The request must contain the information prescribed in 40 CFR 260.20 (d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW.,

Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-MQEP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contract the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedures (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Marquette's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data because Marquette sends the petitioned waste off site for disposal. For petitioners using off-site management, the Agency believes that, in most cases, the ground-water monitoring data collected would not be meaningful for the evaluation of the delisting petition. Most commercial land disposal facilities accept wastes from numerous generators. Any ground-water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, the Agency believes that it would be impossible to isolate ground-water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

Marquette Electronics, Incorporated, Milwaukee, Wisconsin

1. Petition for Exclusion

Marquette Electronics, Incorporated (Marquette), located in Milwaukee, Wisconsin, is involved in the manufacture of electronic equipment. Marquette petitioned the agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Marquette petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Marquette also believes that its treatment process generates a non-hazardous waste because the constituents of concern are not present in appreciable amounts. Marquette further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Marquette's petition.

2. Background

Marquette petitioned the Agency on August 18, 1986 to exclude its filter press sludge generated from the treatment of various process wastewaters (see below) and subsequently provided additional information to complete its petition. In support of its petition, Marquette submitted (1) detailed descriptions of its manufacturing and waste teatment processes and wastewater treatment system, including schematic diagrams; (2) a list of raw materials used at the facility; (3) total constituent data for the EP toxic metals, nickel and cyanide for representative waste samples; (4) EP leachate analysis results for the EP toxic metals and nickel for representative waste samples; (5) leachate analysis results (using distilled water) for cyanide for representative waste samples; (6) total oil and grease analyses data for representative waste samples; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

Marquette manufactures electronic equipment which involves the electroplating of printed circuit boards. The following processes contribute to the waste stream: Deburring; etching; iridiae coating (chromate conversion coating); nickel/gold tab plating; electroless copper plating; and tin/lead and copper plating. A wet deburring machine is operated during the deburring process. Deburring rinsewaters are filtered and then recycled. The filtered sludge is sent off site for copper reclamation. Batch dumps of the rinsewater are discharged periodically (*i.e.*, when necessary or every two weeks) to the wastewater treatment system's concentration sump, a sump which receives concentrated wastes.

The etching process consists of five stages: an etch chamber, etch dragout rinse, water rinse, solder brightening, and final water rinse. Waste from the first two stages are sent off site for copper reclamation. The etching rinsewaters are discharged to the wastewater treatment system's main sump. The etching process baths from these operations are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump (as are most of Marquette's process baths).

Marquette's iridite process, a decorative process, operates independently from other plating processes. This process consists of caustic etch, desmutting, and iridite stages, each of which is followed by a rinse stage. The iridite rinsewaters are discharged to the main sump, and the process baths are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump.

The nickel/gold plating line consists of seven stages, each followed by a rinse stage. The nickel and gold plating baths are the only process baths on this line that are not periodically batch dumped to the concentration sump. These plating baths are subject to metals reclamation. Rinsewaters from the bath subsequent to the gold plating bath are sent off site for gold reclamation. All other rinsewaters are discharged to the wastewater treatment system's main sump.

Marquette's electroless copper line is a seven stage process consisting of an alkaline cleaner, ammonium persulfate, sulfuric acid, activator predip, activator, conditioner, and electroless copper stage. Each stage, except the activator predip, is followed by one or two rinse stages. As with Marquette's other processes, rinsewaters are discharged to the main sump and process baths are dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump with the exception of electroless copper bath waters which are bailed continuously and discharged to the concentration sump.

The tin/lead and copper plating line consists of six stages, each followed by a rinse stage. Small amounts of the acid copper and tin/lead plating baths are removed to replenish the baths and discharged to the concentration sump. Plating rinsewaters are discharged to the main sump, and the remaining process baths are dumped periodically (*i.e.* when necessary or every two weeks) to the concentration sump.

In summary, all of Marquette's process baths from these operations are batch dumped periodically (*i.e.*, when necessary or every two weeks) to the concentration sump, with the exception of the nickel, gold, tin/lead, and copper plate baths (from which metals are

reclaimed) and the electroless copper activator bath (which is bailed continuously throughout the day). Process baths are scheduled to be dumped to the concentration sump at least every two weeks or more frequently when the baths are observed to need changing.

In order to prevent wastewater treatment system upsets, the contents of the concentrate sump are bled slowly to the main sump, which is pumped to the wastewater treatment system. Wastewater treatment processes include: chrome reduction; pH adjustment to 8.5 to 9.0 using sodium hydroxide and sulfuric acid; flocculation with alum, ferrous sulfate, and a polyelectrolyte; and clarification. Effluent from the clarifier is discharged by gravity to the sewer. The clarifier sludge is then pumped to a plate filter press which dewaters the sludge to 20–30 percent solids. The filter press sludge is then emptied into 55-gallon drums before being disposed of off-site. This drummed waste is the subject of Marquette's petition. Effluent from the filter press is returned to the main sump.

Marquette has three degreasing operations also in use at its facility, including: a 1,1,1-trichloroethane cold cleaner, a vapor degreaser, and an in-line cleaner. Marquette claims that wastes generated from these operations are not disposed of in their wastewater treatment system and are not expected to be present in the petitioned waste. The Agency, therefore, did not request sampling and analytical data for constituents contained in these wastes since they were not part of Marquette's petition.

To collect representative samples from 55-gallon drums like Marquette's, petitioners are normally requested to collect a minimum of four composite samples, each comprised of a full-depth core sample collected from one or more of the 55-gallon drums containing the petitioned waste generated over a specific time period (*e.g.*, collect a full-depth core sample from each drum generated during a week and composite the samples weekly). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Marquette collected four composite full-depth core samples on eight occasions from ten 55-gallon drums. On October 7, 1985 two core samples were collected from one drum and combined with two core samples collected from a drum on October 1, 1985. Thus, the composite (consisting of four full-depth cores) covered a one-week period of waste generation. A similar composite sample (*i.e.*, comprising two core samples collected from each of two drums) was collected from two drums sampled on October 24 and 30, 1985. The remaining two composite samples, comprising two core samples collected from each of three drums, were each collected from three drums of the filter press sludge on October 11–21, 1985 and similarly on November 5–11, 1985. Duplicate samples were taken on the final two sampling dates as an additional quality control measure. The four composite samples were analyzed for both total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) and the extraction procedure (EP) leachate concentrations (*i.e*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, cyanide, and nickel.

Based on a review of Marquette's raw materials list and Material Safety Data Sheets, the Agency requested analytical data on 1,1,1-trichloroethane and formaldehyde levels in the waste and testing for ignitability (*i.e.*, flashpoint test results). In response to this request, Marquette collected four additional composite samples from seven drums in December 1986 in a manner similar to the 1985 sampling procedures. These four composite samples were analyzed for total concentrations of formaldehyde and 1,1,1-trichloroethane. Flashpoint tests were also conducted.

Marquette's filter press is operated once or twice a week; the sludge from each filter press run fills a 55-gallon drum. Marquette submitted a batch discharge log for a five-month period (September 12, 1985 to February 6, 1986), which included the period during which sampling was performed. This log demonstrated that the samples collected in support of the petition account for any variation in the number and concentrations of hazardous constituents in the filter press sludge because (1) all process lines were in operation, and (2) all scheduled batch dumps occurred during the sampling period. In addition, Marquette's wastewater treatment system is designed so that process baths are dumped first to the concentration sump before being introduced to the main sump to avoid upsetting the wastewater treatment system.

3. Agency Analysis

Marquette used SW–846 Methods 7060 through 7760 and 9010 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in the filter press sludge. In addition to these methods, Method 1310 was used to determine the leachable concentrations of the EP toxic metals, cyanide, and nickel in the filter press sludge. Total constituent and EP toxicity analysis of the wastewater treatment sludge for the inorganic constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	1.6	0.002
Barium	4.4	0.26
Cadmium	0.58	0.031
Chromium	14.0	ND (0.05)
Lead	340	ND (0.10)
Mercury	0.0075	ND (0.0004)
Selenium	ND (0.01)	ND (0.01)
Silver	0.85	0.01
Nickel	225	3.3
Cyanide	1.4	0.2

ND: Not Detected. Denotes concentrations below the detection limits shown in parentheses.

The detection limits in Table 1 represent the lowest concentrations quantifiable by Marquette, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW–846 Method 9071, Marquette determined that its filter press sludge had a maximum oil and grease content of 0.033 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330. Marquette provided test data indicating that the filter press sludge is not ignitable below 210°F. Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the filter press sludge was also determined not to be corrosive or reactive. Furthermore, Marquette claims that sulfides are not introduced to any of the

processes contributing to the wastewater treatment system. See 40 CFR 261.21, 261.22, and 261.23.

Marquette used "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" Method 601, to quantify the total constituent concentration of 1,1,1-trichloroethane and the National Institute for Occupational Safety and Health (NIOSH) Method 3500, from the *NIOSH Manual of Analytical Methods*, 3rd edition, to quantify formaldehyde levels in the filter press sludge. Total constituent analysis results for these two compounds are reported in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Total constituent analyses
1,1,1-Trichloroethane	0.02
Formaldehyde	ND (0.5)

ND: Not Detected. Denotes a concentration below the detection limit shown in parentheses.

Marquette submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of filter press sludge will be 36 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Marquette's certified estimate of 36 cubic yards.

EPA does not generally verify submitted tests data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Marquette's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter press sludges and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground wate. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 52 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of Marquette's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Marquette's filter press sludge. The Agency's evaluation, using Marquette's estimate of 36 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, chromium, lead, mercury, and selenium) from Marquette's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Arsenic	0.00006	0.05
Barium	0.008	1.0
Cadmium	0.001	0.01
Silver	0.0003	0.05
Nickel	0.1	0.5
Cyanide	0.006	0.2

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press sludge exhibited arsenic, barium, cadmium, silver, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting decision making. Because the maximum reported concentration of total cyanide in the waste is 1.4 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. The Agency accepts Marquette's claim that sulfides are not introduced to the process and, therefore, believes that reactive sulfide levels are not of concern.

The Agency also evaluated the mobility of the hazardous organic constituents detected in Marquette's waste using the VHS model. The Agency used the OLM to predict the leachable concentration of 1,1,1-trichloroethane in the filter press sludge. The resulting leachable concentration then was used as an input in the VHS model in order to assess the potential impacts of this constituent upon the ground water. The calculated compliance-point concentration for 1,1,1-trichloroethane is presented in Table 4. The Agency did not evaluate the mobility of formaldehyde from Marquette's filter press sludge because it was not detected in the waste using the appropriate analytical method (see Table 2). As stated previously, the Agency does not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATION (PPM) FILTER PRESS SLUDGE

Constituent	Compliance-point concentration	Level of regulatory concern [1]
1,1,1-Trichloroethane	0.00007	0.2

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press sludge exhibited 1,1,1-trichloroethane levels well below the health-based level. The Agency concluded, after reviewing Marquette's processes and raw materials list, that no hazardous constituents of concern, other than those tested for, are being used by Marquette and that no other constituents of concern are likely to be present or formed as reaction products or by-products in Marquette's waste. On the basis of test results submitted by the petitioner, pursuant to 40 CFR 260.22, the Agency concludes that the filter press sludge does not exhibit any of the characteristics of ignitability, corrosibility, or reactivity. See 40 CFR 261.21, 261.22, and 26123, respectively.

5. Conclusion

The Agency believes that Marquette has successfully demonstrated that it filter press sludge is not hazardous. Marquette's manufacturing and waste treatment processes are believed to be consistent because the facility does not perform as a job shop or have seasonal product variations. Furthermore, the Agency believes that the samples collected by Marquette were not biased and that Marquette's five and one-half week sampling period adequately characterized any day-to-day variation of constituent concentrations that may occur in the sludge. Marquette's log of batch discharges to the wastewater treatment system indicates that the samples collected account for any constituent variation in the waste because all process lines were in operation and all scheduled bath dumps occurred during the sampling period. The Agency, therefore, is proposing that Marquette's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Marquette Electronics, Incorporated, located in Milwaukee, Wisconsin, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will apply only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective is less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553 (d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entitiies since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Date: November 1, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In table 1 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
• • •	• • •	• • •
Marquette Electronics Incorporated.	Milwaukee, Wisconsin.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations.
• • •	• • •	• • •

[FR Doc. 88-25772 Filed 11-7-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3472-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Occidental Chemical Corporation, Sheffield, Alabama, to conditionally exclude certain solid wastes generated at its Muscle Shoals Plant from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evalauting the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until December 23, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joe Carra, whose address appears below, by November 23, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-OCEP-FFFFF."

Requests for a hearing should be addressed to Joe Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR § 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) Toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a

mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Occidental's petitioned waste on human health and the environment, if the waste is removed from RCRA Subtitle C control. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Occidental is seeking an upfront delisting (*i.e.*, an exclusion for wastes not yet generated), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and thus, would serve no purpose.

Occidental petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a pilot-scale waste treatment process (*i.e.*, a scaled-down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from Occidental's full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of Occidental's upfront delisting petition, a list of constituents was developed for the verification testing, and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the useof the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on today's proposed decision until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

Occidental Chemical Corporation, Sheffield, Alabama.

1. Petition for Exclusion

Occidental Chemical Corporation (Occidental), located in Sheffield, Alabama, produces chlorine and caustics for industrial use. Occidental petitioned the Agency to conditionally exclude from regulation as a hazardous waste its wastewater treatment sludge generated by its mercury cell process, presently listed as EPA Hazardous Waste No. K106—"Wastewater

treatment sludge from the mercury cell process in chlorine production." The listed constituent of concern for K106 waste is mercury. Occidentald petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Occidental also believes that its treatment process will generate a non-hazardous waste because the constituent of concern, although present in the waste, is both low in concentration and is in an essentially immobile form. Occidental further believes that the waste is not hazardous for any other reason (*i.e.,* there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Occidental's petition.

2. Background

Occidental petitioned the Agency to exclude its treatment residues on July 22, 1987 and subsequently provided additional information to complete its petition. In support of its petition, Occidental submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; and (2) a list of all the raw materials used in both the manufacturing and treatment processes. For representative samples of the reported filter cake, as generated, using a pilot-scale treatment system Occidental provided (1) results from total constituent and EP toxicity analyses for all the EP toxic metals, nickel and cyanide; (2) results from total constituent analyses for hydrazine; and (3) total oil and grease analyses. Once Occidental's full-scale treatment system is on-line, EPA proposes that Occidental be required to submit the results of total constituent analyses for all the EP toxic metals, nickel, and cyanide, reactive cyanide, and reactive sulfide and results of EP toxicity analyses for all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions) on treated batches of retorted filter cake (see Section 6—*Verification Testing Conditions*).

Occidental produces chlorine and caustics using a mercury cell process (*i.e.,* electrolysis of sodium chloride or potassium chloride brine). Rock salt and potassium chloride are dissolved and purified to form brines. The brine flows into one of the 116 electrolytic cells containing dimensionally stable anodes and flowing mercury cathodes. Chloride salt is removed from the brine by electrolysis and the deplated brine containing small amounts of mercury is pumped back to the brine system, where additional salt is added in a continuous closed loop operation. All wastewaters containing mercury contaminants are collected. The major portion of the contaminated wastewaters are created through: (1) Purging of the water used as vapor seals or portions of the electrolytic cells (endboxes), (2) wash downs of the cells building, and (3) rain or wash down water in the brine, caustic filtration, and cell building areas.

All wastewater is collected and pumped either to a wastewater storage tank or, in the case of periodic maintenance of or other work on the storage tank, directly to the wastewater treatment system receiver. At the inlet of the receiver, hydrazine (a reducing agent) is added to precipitate mercury into a filtered form. Currently, the mixture is filtered and the filter cake is sent to a Subtitle C landfill. The effluent is sent through a carbon adsorption unit and discharged through a permitted NPDES outfall. The normal hydrazine concentration in the wastewater during treatment is 0.5 ppm. Occidental claims that upon exposure to air, hydrazine spontaneously and rapidly decomposes to form nitrogen and water.

Once its treatment system is on-line, Occidental proposes to wash the filter cake prior to cleaning out the filter press, but after the plate and frame filters are taken out of service (*i.e.,* the filter cake will be washed after the filter press is turned off, but prior to its removal). All wash water will then be sent through the treatment system, and the remaining filter cake will be removed from the filter press (after washing) and retorted on a batch basis. The filter cake will be placed in the retort vessel and steam will be injected into the retort vessel to vaporize the mercury. The mercury vapors will flow out of the vessel and into a condenser where the mercury will be cooled, condensed, and collected for reuse in the electrolytic process. Trace non-condensable mercury vapors will pass through and be removed in a carbon adsorption column. The completely dryretorted filter cake (*i.e.,* the filter cake remaining in the retort vessel) will be removed and either disposed in an off-site Subtitle D landfiil or reused in Occidental's treatment system as filter aid (diatomaceous earth), if the exclusion is granted.

To collect representative samples from filter presses like Occidental's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.,* grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Occidental collected a total of four composite samples of the filter cake (taken from the filter press catch pans). Each composite was made from six grab samples. At the time of sampling Occidental was operating two filter presses. On March 11 and 12, 1987, the two filter presses were cleaned and one composite sample was collected from each. On April 6, the two filter presses were again cleaned, and an additional composite sample was collected from each filter press.

The four composite samples were sent to Occidental's Delaware City plant for retorting. The Muscle Shoals Plant retort vessel, except for scale, will be identical to the Delaware City retort vessel. The retorted sludge was sent to an outside lab for testing [for convenience, the lab is treated here as part of Occidental]. Occidental claims that, due to a consistent manufacturing process and the fact that the Delaware City retort vessel and the proposed Muscle Shouls retort vessel are identical, except for scale, the tested samples are representative of the retort filter cake to be generated once the new treatment system is fully operational.

3. Agency Analysis

Occidental used SW–846 method numbers 7060–7760 and 9010 to quantify the total constituent concentrations of all the EP toxic metals, nickel, and cyanide. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986. Occidental used SW–846 method number 1310 to quantify the EP leachable concentrations of all the EP toxic metals, nickel, and cyanide in its waste. Total constituent analysis of the pilot-scale retorted treatment residue revealed the maximum total constituent concentrations (*i.e.,* mass of a particular constituent per mass of waste) for the EP toxic metals, nickel,

and cyanide presented in Table 1. EP toxicity analysis for the EP toxic metals, nickel, and cyanide revealed the maximum EP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) presented in Table 2. These detection limits represent the lowest concentrations quantifiable by Occidental, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause intereferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS RETORTED FILTER CAKE

Constituents	Concentrations (mg/kg)
Arsenic	27
Barium	48
Cadmium	4.6
Chromium	68
Cyanide	2.73
Lead	99
Mercury	100
Nickel	42
Selenium	ND (0.6)
Silver	9.9

ND: Not Detected. Denotes concentration below the detection limits specified in parentheses.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS RETORTED FILTER CAKE

Constituents	Concentrations (mg/1)
Arsenic	0.033
Barium	0.14
Cadmium	0.016
Chromium	ND (0.005)
Cyanide	ND (0.01)
Lead	ND (0.06)
Mercury	0.0024
Nickel	0.13
Selenium	ND (0.005)
Silver	ND (0.007)

ND: Not Detected. Denotes concentrations below the detection limits specified in parentheses.

Occidental did not analyze for sulfide because sulfide is not used in the process, consequently, sulfide is not expected to be present in the waste. However, as explained later, if a final exclusion is granted, Occidental will be required to analyze for sulfide during the verification testing period. Analysis for the concentration of total hydrazine, using American Society of Testing Methods (ASTM) number D–1385 (an SW–846 test method for hydrazine is not available) and a detection limit of <0.2 mg/kg, demonstrated that hydrazine was not detectable in the retorted waste.

Occidental claims that no other hazardous constituents of concern, except for carbon tetrachloride, are used in its manufacturing or treatment processes. However, Occidental claims that carbon tetrachloride will not be present in the retorted filter cake because carbon tetrachloride is used outside of the wastewater treatment system (*i.e.*, carbon tetrachloride is used in the chlorine gas purification system). The Agency accepted this explanation. Finally, Occidental claims that the waste does not exhibit any of the characteristics of ignitability, reactivity, or corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

Wastes having more than one percent total oil and grease may have significant concentrations of the constituents of concern in the oil phase (which may not be assessed using the standard EP leachate procedure) or the concentration of oil and grease may be sufficient to coat the solid phase of the sample (interfering with the leaching out of metals from the sample). Consequently, the Agency requires that the EP analyses be modified in accordance with the Oily Waste EP methodology if the waste exhibits more than one percent total oil and grease. See SW–846 method number 1330. Using SW–846 method number 9070, Occidental determined that its waste had a maximum total oil and grease content of less than 5 mg/l (0.0005 percent); therefore, EP analyses did not have to be modified in accordance with the Oily Waste EP methodology.

Occidental submitted a signed certification stating that, based on current annual waste generation and pilot-scale results, it anticipates generating no more than 40 cubic yards of retorted filter cake annually. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Occidental's certified estimate of 40 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions and has not verified the data upon which it proposes to grant Occidental's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may elect to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for retorted filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Occidental's waste.

The Agency used the VHS model to evaluate the mobility of arsenic, barium, cadmium, nickel, and mercury from Occidental's waste. The Agency's evaluation, using Occidental's maximum waste generation rate of 40 cubic yards and the maximum EP leachate concentrations of the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, chromium, cyanide, lead, selenium, and silver) from Occidental's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent can not be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS RETORTED TREATMENT RESIDUE

Constituents	Compliance-Point Concentrations (mg/1)	Regulatory Standards (mg/1)
Arsenic	0.001	0.05
Barium	0.0043	1.0
Cadmium	0.0005	0.01
Mercury	0.0001	0.002
Nickel	0.004	0.5

The retorted filter can waste exhibited arsenic, barium, cadmium, mercury, and nickel levels at the compliance point below the health-based levels used in delisting decisionmaking. See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

Because the total constituent concentration of cyanide is 2.73 ppm, the Agency believes that the concentration of reactive cyanide will not exceed the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket. Last, the Agency normally requests analyses for reactive sulfide; however, since sulfides are not used in any of Occidental's processes and since this is a proposed "upfront" exclusion requiring additional verification testing, the Agency, in this case, will process this petition without requiring Occidental to provide analyses for reactive sulfide at this time. If, however, a final exclusion is granted, Occidental would be required to test for reactive sulfide during the verification testing period. If concentrations of reactive sulfide are then detected above the Agency's level of regulatory concern, Occidental would be required to either retreat the waste or handle the waste as hazardous.

The Agency reviewed Occidental's list of raw materials and material safety data sheets and did not identify any other hazardous constituents of concern being used by Occidental, other than hydrazine (or carbon tetrachloride as discussed above), and it believes that no other hazardous constituents of concern are likely to be present or formed as reaction products or by-products of Occidental's waste. The Agency believes that hydrazine will not be present at detectable levels in the retorted residue because hydrazine, on exposure to oxygen, completely decomposes into nitrogen and water. As stated above, hydrazine was not detected in the retorted waste from the pilot-scale system, and the Agency will not evaluate non-detectable concentrations of a constituent of concern if it does not believe that the constituent will be present in the petitioned wastestream. Lastly, based on the data submitted by Occidental, the waste is not expected to exhibit any of the characteristics of ignitability, reactivity, or corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that Occidental's proposed retort treatment system can render the K106 wastes non-hazardous. The manufacturing and treatment processes are believed to be uniform and consistent since the facility neither operates as a job shop nor has seasonal product variations. However, Occidental has reported that the total constituent concentration of mercury varies according to the amount of precipitation. Therefore, at certain times, it will be possible for the total constituent concentration of mercury to be higher than the total constituent concentration of mercury demonstrated during Occidental's sampling period. As a result of the possible variation in the total concentration of mercury, Occidental requested an exclusion conditioned upon the collection of samples of retort filter cake and the subsequent analysis for EP leachate concentrations of mercury, proposed testing of each treated batch for EP levels of mercury, as discussed below, addresses the Agency's concern of possible variation in the EP leachable mercury levels occurring in Occidental's treatment residue.

The Agency, therefore, is proposing that Occidental's retorted filter cake, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to Occidental Chemical Corporation, located in Sheffield, Alabama, for its retorted treatment filter cake described in its petition as EPA Hazardous Waste No. K106. If the proposed rule becomes effective, the retorted treatment filter cake would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned by Occidental.

This proposed exclusion is conditional upon the following:

(1) Occidental must collect representative grab samples of each treated batch of retored filter cake prior to its disposal or recycling and analyze the samples for the EP leachate concentration of mercury. Analyses must be performed according to SW–846 methodologies. Any treated batch or retorted filter cake which exhibits EP leachable mercury at a concentration exceeding 0.065 mg/1 must either be retreated until it meets this level or be managed and disposed of in accordance with Subtitle CZ of RCRA. Occidental must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

The Agency is proposing to require Occidental to continually test each batch of retorted filter cake for the EP leachate concentration of mercury prior to the filter cake's disposal or recycyling, in order to ensure that the EP leachate concentration of mercury has been reduced to below the level of regulatory concern. This requirement is included because it occasionally may be necessary to re-treat treated batches to reduce the concentration of EP leachate mercury to meet the delisting level of 0.065 mg/1.

(2) Occidental must collect weekly composite samples comprised of representative grab samples from each batch of retorted filter cake generated during the particular week and analyze the weekly composite samples for both the total constituent and EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Occidental must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report.

(3) If, under condition (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 m/1; for barium exceeds 32.3 mg/1; for cadmium or selenium exceed 0.323 mg/1; for nickel exceeds 16.15 mg/1; for cyanide exceeds 22.61 mg/1; or for total

reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(4) The requirements of conditions (2) and (3) only shall be terminated by EPA when the results of four consecutive weekly composite samples for the petitioned waste show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies Occidental that the requirements of condition (2) have been lifted.

The Agency is proposing a mechanism both to collect a minimum of four weekly composite samples and to terminate the testing and reporting requirements of condition (2), after four consecutive weeks of meeting the delisting levels, for the reasons stated below.

First, the Agency is proposing to require sufficient analytical retort treatment system is on-line and operating properly. The Agency determined through its review of similar petitions that approximately four weeks are required for a facility to train operators and collect sufficient data to verify that the full-scale treatment process is operating correctly. Accordingly, the Agency is proposing that Occidental be required to collect a minimum of four weekly composite samples. (If Occidental needs more than four weeks to bring its full-scale treatment process up to specifications in order to meet the delisting levels of condition (3) the terms of condition (4) require four consecutive weeks once meeting specifications.)

Second, based both on the pilot-scale data submitted by Occidental and the characteristics of the untreated waste (*i.e.*, un-retorted filter cake), the Agency believes that consistently non-hazardous levels of the EP toxic metals (except mercury), nickel, cyanide, reactive sulfide, and reactive cyanide can be generated from Occidental's retort treatment process. Thus, the Agency believes that, in this case, a requirement for continued testing, after four consecutive weekly composite samples meet the delisting levels of condition (3), would be excessive.

Lastly, the termination of the sampling and reporting requirements of condition (2), after four consecutive weekly composite samples meet the delisting levels of condition (3), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986) and here for mercury, may require continuous batch testing.

(5) All data must be submitted to the Chief, Variances Section, PSPD/OSW (OS–343), U.S. EPA, 401 M Street, SW. Washington, DC 20460 within the time period specified in conditions (1) and (2), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion

(Name of Certifying Person) Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes or waste volumes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, of promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the

overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 2, 1988.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
*	* *	* *
Occidental Chemical Corp., Muscle Shoals Production Plant	Sheffield, Alabama	Retorted filter cake from the treatment of wastewater sludge generated from the mercury cell process in clorine production (EPA Hazardous Waste No. K106) after [insert date of final rule's publication]. This exclusion is conditional upon the submission of data obtained form Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) Occidental must collect representative grab samples of each treated batch of retorted filter cake prior to its disposal or recycling and analyze the sample for the EP leachate concentration of mercury. Analyses must be performed according to SW-846 methodologies. Any treated batch of retorted filter cake which exhibits EP leachable mercury at a concentration exceeding 0.065 mg/l must either be retreated until it meets this level or managed and disposed of in accordance with Subtitle C of RCRA. Occidental must report the analytical data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (2) Occidental must collect weekly composite samples comprised of representative grab samples from each batch of retorted filter cake generated during the particular week and analyze the weekly composite samples for both the total constituent and EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water instead of acetic acid in the cyanide extraction), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Occidental must report the analytical test data within 90 days after the treatment of the first full-scale batch, and every 90 days following the initial report. (3) If, under condition (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for nickel exceeds 16.15 mg/l; for cyanide exceeds 22.61 mg/l; or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or be managed and disposed of in accordance with Subtitle C of RCRA.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste Description

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(4) The requirements of conditions (2) and (3) only shall be terminated by EPA when the results of four consecutive weekly composite samples for the petitioned waste show the maximum allowable levels in condition (3) are not exceeded and the Chief, Variances Section, notifies Occidental that the requirements of condition (2) have been lifted. (5) All data must be submitted to the Chief Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in conditions (1) and (2), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement. "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if its never had effecat or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the comapny's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
•	•	• • •

[FR Doc. 88-25773 Filed 11-7-88; 8:45 am]
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NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants; Enforcement and Hearing Procedures; Tourism Guidelines

AGENCY: National Science Foundation.

ACTION: Proposed rule.

SUMMARY: The National Science Foundation proposes to issue regulations governing the administrative handling of alleged violations of the Antarctic Conservation Act of 1978. The regulations cover the full range of procedural requirements for civil enforcement actions initiated by NSF against those who contravene the mandates of the Antarctic Conservation Act. Subjects covered include, but are not limited to, complaint procedures, notice and opportunity for response, pre-hearing activities and motion practice, adjudicatory hearing procedures, standards of proof, penalty assessments, settlement, and appeal. Responsibilities of various units within NSF are also set out in detail.

DATE: Comments must be received on or before January 2, 1989.

ADDRESS: Comments may be mailed to National Science Foundation, Office of the General Counsel, Room 501, 1800 G. Street, NW. Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Deputy General Counsel, or Lawrence Rudolph, Assistant General Counsel at (202) 357-9435.

SUPPLEMENTARY INFORMATION: The Director of the National Science Foundation is responsible for enforcing various conservation and environmental protection provisions of the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.* The Act specifies prohibited acts by United States citizens, such as discharging pollutants, or killing, trapping, harming, or harassing protected species, without a valid NSF permit. Violators of the Act are subject to civil penalty actions initiated by NSF and to possible criminal proceedings as well.

In the absence of formal hearing regulations, the Act allows NSF to proceed against alleged violators and seek penalties so long as the Administrative Procedure Act requirements for adjudicatory hearings are followed. Until recently, due to the remoteness of the Antarctic region and the relatively small number of scientists and visitors there, few violations of the Act occurred. NSF informally handled these instances of non-compliance.

The past five years have witnessed a dramatic rise in tourism in the Antarctic, expanded scientific research throughout the Continent, and increased operational activity at United States stations. NSF concludes that enforcing Antarctic conservation measures and preserving present and future opportunities for scientific research will become increasingly difficult if the Foundation relies solely on voluntary compliance and informal enforcement methods.

Early in 1988, NSF considered revising its regulations under the Antarctic Conservation Act to include formal enforcement and hearing procedures designed to insure the fair and efficient handling of administrative complaints that charge individuals with violations

of the Act. NSF announced that it would conduct a public hearing to aid the Foundation in its deliberations concering the need for hearing and enforcement regulations and for possible Antarctic tourism guidelines. On July 15, 1988, members of the public, scientists who perform research in the Antarctic, naturalists, environmentalists, lawyers, and representatives of the tourism industry attended NSF's public hearing and offered statements for the record.

The Antarctic Conservation Act authorizes NSF to establish formal regulatory procedures that facilitate efficient processing of administrative penalty cases and prevent procedural disputes from stalling the swift and just resolution of alleged violations of the Act. Based on further review of the issues and the record of the public hearing, the Foundation determined that it should propose formal hearing and enforcement regulations. These proposed regulations are primarily procedural in nature; they govern NSF's internal handling of complaints regarding violations of the Antarctic Conservation Act.

Effective hearing and enforcement procedures deter environmental and conservation violations and demonstrate the Foundation's continuing commitment to its obligations under the Act and to international leadership in the Antarctic community. The proposed regulations are similar to the regulations promulgated by other agencies governing enforcement cases and the administrative assessment of civil penalties.

This proposed regulatory action is one of several initiatives discussed at the public hearing. Comments by interested parties are encouraged. NSF intends to thoroughly review all comments, as well as other issues and proposals raised at the public hearing, and take further appropriate action. For example, NSF may establish a working group of representatives of the tourism industry, scientists, environmentalists, and others to review NSF's tourism policies. Among other issues, the working group may assess the effectiveness of voluntary restrictions on the numbers and kinds of tourist activities, since most of the hearing participants favored minimizing mandatory restrictions. NSF reserves the right to further amend its regulations if it determines that such action is necessary to protect Antarctic science, natural resources, and wildlife.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the rules primarily affect the internal procedures of a Federal Agency.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Conservation of antarctic animals and plants, Enforcement and hearing procedures.

For the reasons set out in the preamble, Title 45, Subtitle B, Chapter VI of the Code of Federal Regulations is proposed to be amended by adding Subpart K to Part 670 as set forth below.

Dated: November 2, 1988.

Robert M. Andersen,

Deputy General Counsel, National Science Foundation.

PART 670—[AMENDED]

Subpart K is added to read as follows:

Subpart K—Enforcement and Hearing Procedures

Sec.

Subpart K—Enforcement and Hearing Procedures

Authority: The Antarctic Conservation Act of 1978, 16 U.S.C. 2409(f); 2405; 2401–2412; The National Science Foundation Act, 42 U.S.C. 1861 *et seq.*

§ 670.50 Hearing procedures—Scope of these rules.

(a) These hearing rules govern all adjudicatory proceedings for the assessment of civil penalties or imposition of other sanctions pursuant to the Antarctic Conservation Act of 1978, 16 U.S.C. 2407; 2404(f); 2401–2412; and

(b) Other adjudicatory proceedings that the Foundation, in its discretion, determines are appropriate for handling under these rules, including proceedings governed by the Administrative Procedure Act requirements for "hearings on the record." 5 U.S.C. 554 (1982).

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Director or Presiding Officer.

§ 670.51 Definitions.

(a) Throughout these rules, words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa.

(b) "Act" means the particular statute authorizing the initiation of the proceeding.

(c) "Administrative Law Judge" means an Administrative Law Judge appointed under 5 U.S.C. Section 3105 (See also Pub. L. 95–251, 92 Stat. 183).

(d) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the Presiding Officer or any other person who will participate or advise in the decision.

(e) "Complaint" means a written communication, alleging one or more violations of specific provisions of the Act, Treaties, NSF regulations or a permit promulgated thereunder, issued by the complainant to a person under this subpart.

(f) "Consent Agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law, and a proposed penalty, revocation or suspension of a permit, or other sanction.

(g) "Director" means the Director of the National Science Foundation (NSF) or his delegatee.

(h) "Final Order" means (1) an order issued by the Director after an appeal of an initial decision, accelerated decision, a decision to dismiss, or default order, or (2) an initial decision which becomes a final order.

(i) "Foundation," Agency," or "NSF" means the National Science Foundation.

(j) "Hearing" means a hearing on the record open to the public and conducted under these rules.

(k) "Hearing Clerk" is the person with whom all pleadings, motions, and other documents required under this subpart are filed.

(l) "Initial Decision" means the decision issued by the Presiding Officer based upon the official record of the proceedings.

(m) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) "Permit" means a permit issued under section 5 of the Antarctic Conservation Act of 1978, 16 U.S.C. section 2404.

(o) "Person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding Officer" means the attorney designated by the Director to conduct hearings or other proceedings under this subpart.

(q) "Respondent" means any person proceeded against in the complaint.

(r) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

§ 670.52 Powers and duties of the Director; Presiding Official; Division of Polar Programs.

(a) *Director.* The Director of NSF shall exercise all powers and duties as prescribed or delegated under the Act and these rules.

(b) The Director may delegate all or part of his authority. Partial delegation does not prevent the Presiding Officer from referring any motion or case to the Director.

(c) *Presiding Officer.* The Director may designate one or more Presiding Officers to perform the functions described below. The Presiding Officers shall be attorneys who are permanent or temporary employees of the Foundation or some other Federal Agency and may perform other duties compatible with their authority as hearing officers. Administrative Law Judges may perform the functions of Presiding Officers. The Presiding Officer shall have performed no prosecutorial or investigatory functions in connection with any matter related to the hearing.

(d) The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of facts, law or discertion;

(9) Issue subpoenas authorized by the Act; and

(10) Take all actions necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(e) *Disqualification; Withdrawal.* (1) The Presiding Officer may not participate in any matter in which he (i) has a financial interest or (ii) has any relationship with a party or with the subject matter which would make it inappropriate for him to act. Any party may at any time by motion made to the Director, or his delegatee, request that the Presiding Officer be disqualified from the proceeding.

(2) If the Presiding Officer is disqualified or withdraws from the proceeding, the Director shall assign a qualified replacement who has none of the infirmities listed in paragraph (e)(1) of this section. The Director, should he withdraw or disqualify himself, shall assign the Deputy Director to be his replacement.

(f) *Division of Polar Programs.* The Division of Polar Programs (DPP) manages and operates the national program in Antarctica, including administration of the Antarctic Conservation Act (ACA) permit system. DPP is responsible for investigating alleged violations of the "prohibited acts" section of the ACA and alleged noncompliance with ACA permits. DPP will act as the official complainant in all proceedings under the ACA governed by these rules. DPP may delegate all or part of its investigatory duties to other appropriate NSF employees, other qualified federal employees, or consultants. DPP will prepare complaints with the assistance of designated prosecuting attorneys within NSF's Office of General Counsel, other qualified federal attorneys, or other appropriate legal representative selected jointly by DPP and OGC. The designated prosecuting attorney will represent DPP in all proceedings governed by these rules.

(g) The Division of Polar Programs, acting on behalf of the Director, may designate qualified individuals as enforcement officers empowered to execute all of the law enforcement functions set forth in section 10 of the ACA, 16 U.S.C. 2409, as well as any other appropriate actions ancillary to those statutory duties. DPP will provide each enforcement officer with official enforcement credentials for identification purposes and use during execution of official duties. DPP may also designate knowledgeable individuals to provide educational and other information regarding the Antarctic to tour operators, their clients and employees, and other visitors to the Antarctic.

(h) The Division of Polar Programs shall prepare for publication and distribution a clear, concise explanation of the prohibited acts set forth in the Antarctic Conservation Act, and other appropriate educational material. The explanation may be translated into Spanish, French, German, or other foreign languages. This material shall be provided to tour operators for distribution to their passengers and crew prior to or during travel to the Antarctic. Tour operators shall distribute provided materials to each passenger and crew member.

§ 670.53 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding, shall be filed with the Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, he shall file the original of the

correspondence with the Hearing Clerk, maintain a copy in the duplicate file, and send a copy to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of a copy of the signed original of the complaint, together with a copy of these rules, may be made personally or by certified mail, return receipt requested, on the respondent or his representative.

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof; or

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing it or by his representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

§ 670.54 Filing and service of rulings, orders, and decisions.

(a) All rulings, orders, decisions, and other documents issued by the Presiding Officer shall be filed with the Hearing Clerk. Copies of all such documents shall be served personally, or by certified mail, return receipt requested, upon all parties.

(b) *Computation.* In computing any period of time prescribed or allowed in these rules, except as otherwise provided, computation is by calendar days and does not include the day of the event from which the designated period begins to run. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(c) *Extensions of time.* The Presiding Officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(d) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

(e) *Ex parte discussion of proceeding.* At no time after the issuance of the complaint shall the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or other factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The Presiding Officer shall give the other parties an opportunity to reply.

(f) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Hearing Clerk.

(g) The person seeking copies of any documents filed in a proceeding shall bear the cost of duplication. Upon a formal request the Agency may waive this cost in appropriate cases.

§ 670.55 Appearances.

(a) *Appearances.* Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(b) *Intervention.* A motion for leave to intervene in any proceeding conducted under these rules must set forth the grounds for the proposed intervention, the position and interest of the movant, and whether the intervention will cause delay. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(c) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference, or if there is no such conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (b) of this section, a statement of good cause for the failure to file in a timely manner. Agreements, arrangements, and other

matters previously resolved during the proceeding are binding on the intervenor.

(d) *Disposition.* The Presiding Officer may grant leave to intervene only if the movant demonstrates that (1) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (2) the movant will be adversely affected by a final order; and (3) the interests of the movant are not being adequately represented by the original parties. The intervenor becomes a full party to the proceeding upon the granting of leave to intervene.

(e) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reason why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Director shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, motions, and orders relating to issues to be briefed.

(f) *Consolidation.* The Presiding Officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules where (1) there exists common parties or common questions of fact or law; (2) consolidation would expedite and simplify consideration of the issues; and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(g) *Severance.* The Presiding Officer may, by motion or sua sponte, for good cause, shown order any proceedings severed with respect to any or all parties or issues.

§ 670.56 Issuance of complaint.

(a) *General.* If the complainant has reason to believe that a person has violated any provision of the Antarctic Conservation Act, other Act or attendant regulations, or a permit issued under the ACA, he may institute a proceeding for the assessment of a civil penalty or other sanctions by issuing a complaint under the Act and these rules.

(b) If the complainant has reason to believe that (i) a permittee violated any term or condition of the permit, or (ii) a permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the the permit application, or (iii) other good cause exists for such action, he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the Act and these rules. A complaint may seek suspension or revocation of a permit in addition to the assessment of a civil penalty.

(c) *Content and amendment of the complaint.* All complaints shall include:

(1) A statement reciting the section(s) of the Act, regulations, and/or permit authorizing the issuance of the complaint;

(2) A concise statement of the factual basis for all alleged violations; and

(3) Notice of the respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the proposed sanction.

(d) Each complaint for the assessment of a civil penalty shall also include:

(1) Specific reference to each provisions of the Act and implementing regulations which respondent is alleged to have violated;

(2) The amount of the civil penalty which is proposed to be assessed; and

(3) A statement explaining the reasoning behind the proposed penalty;⅓⅓

(e) Each complaint for the revocation or suspension of a permit shall also include:

(1) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(2) A request for an order to either revoke or suspend the permit and a statement of the terms and conditions of any proposed partial suspension or revocation; and

(3) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa.

A copy of these rules shall accompany each complaint served.

(f) *Derivation of proposed civil penalty.* The complainant shall determine the dollar amount of the proposed civil penalty in accordance with any criteria set forth in the Act and with any civil penalty guidance issued by NSF.

(g) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file his answer.

(h) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer.

(i) Complainant, in cooperation with the Office of General Counsel, may refer cases to the Department of Justice for possible criminal prosecution if there is reason to believe that respondent willfully violated the Antarctic Conservation Act or its attendant regulations. Such referral does not automatically preclude NSF from proceeding administratively under the Act and these rules against the same respondent.

§ 670.57 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the Hearing Clerk. Any such answer to the complaint must be filed with the Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint. If respondent asserts he has no knowledge of a particular factual allegation, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which respondent intends to place at issue; and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. The Presiding Officer may deem the right to a hearing waived if it is not requested by respondent. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, to examine issues raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 670.58 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the basis or grounds with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, or other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party must file a response to any written motion within ten (10) days after service of such motion, unless the Presiding Officer allows additional time. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the Presiding Officer may deem the parties to have waived any objection to the granting of the motion. The Presiding Officer may also set a shorter time for response, or make such other appropriate orders concerning the disposition of motions.

(c) *Ruling on Motions.* The Presiding Officer shall rule on all motions, unless otherwise provided in these rules. The Presiding Officer may permit oral argument if he considers it necessary or desirable.

§ 670.59 Default order.

(a) *Default.* The Presiding Officer may find a party in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Presiding Officer in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order shalll constitute the initial decision, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended, or the terms and conditions of permit revocation or suspension, or other sanctions.

(d) The Presiding Officer may set aside a default order for good cause shown.

§ 670.60 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Presiding Officer whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, or to other sanctions or actions in mitigation. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the rules without a consent order from the Director or his delegatee. Before signing such an order, the Director or his delegatee may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

(d) *Actions by respondent to clean, protect, enhance, or benefit the environment.* NSF may accept from respondent environmentally beneficial actions, in lieu of penalties, in whole or in part, assessed under the Antarctic Conservation Act. An assessment of the monetary value of any action in mitigation shall be made before that action is incorporated as a part of any consent agreement and order.

§ 670.61 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding officer, each party at the prehearing conference shall make available to all parties (1) the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony, and (2) copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. The Presiding Officer may exclude from evidence any document or testimony not disclosed at the prehearing conference. If the Presiding Officer permtis the submittal of new evidence, he will grant parties a reasonable opportunity to respond.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or sua sponte. The Presiding Officer

shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or sua sponte, may conduct a telephonic conference or direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(e) *Other discovery.* (1) Except as provided by paragraph (b) of this section, further discovery shall be permitted only upon determination by the Presiding Officer that (i) such discovery will not in any way unreasonably delay the proceeding; (ii) the information to be obtained is not otherwise obtainable; and (iii) such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that (i) the information sought cannot be obtained by alternative methods; or (ii) there is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party may request further discovery by motion. Such a motion shall set forth (i) the circumstances warranting the taking of the discovery; (ii) the nature of the information expected to be discovered; and (iii) the proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order granting discovery, with any qualifying conditions and terms.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to (i) the inference that the information to be discovered would be adverse to the party from whom the information was sought; or (ii) the issuance of a default.

§ 670.62 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law regarding all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the respondent, may at any time dismiss as action without further hearing or upon such limited additional evidence as he requires, if complainant fails to establish a prima facie case, or if other grounds show complainant has no right to relief.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall then issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

§670.63 Scheduling the hearing.

(a) When an answer is filed, the Hearing Clerk shall forward the complaint, the answer, and any other documents filed thus far in the proceeding to the Presiding Officer, who will notify the parties of his assisgnment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer, the Presiding Officer shall serve upon the parties a notice setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* The Presiding Officer will not grant a request for postponement of a hearing except upon motion and for good cause shown.

§ 670.64 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Notwithstanding the preeding sentence, evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is inadmissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its introduction into evidence. The Presiding Officer may review such evidence in camera, and issue appropriate protection orders.

(b) *Examination of witnesses.* Parties shall examine witnesses orally, under oath or affirmation, except as otherwise provided in these rules or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing.

(c) *Verified statements.* The Presiding Officer may admit into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibililty of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement ot the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are "unavailable," within the meaning of that term under Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticeable in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 670.65 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be made orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

§ 670.66 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, suspension, or other sanction, is appropriate. Following the establishment of a prima facie case, respondent has the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. The Presiding Officer shall decide all controverted matters upon a preponderance of the evidence.

§ 670.67 Filing the transcript.

The hearing shall be transcribed verbatim. After the Presiding Officer closes the record, the reporter shall promptly transmit the original and certified copies to the Hearing Clerk, and one certified copy directly to the Presiding Officer. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may obtain a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer.

§ 670.68 Proposed findings, conclusions, and order.

Unless otherwise ordered by the Presiding Officer, any party may submit proposed findings of fact, conclusions of law, and a proposed order, together with supporting briefs, within twenty (20) days after the parties are notified of the availability of the transcript. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and relied-upon authorities.

§ 670.69 Initial decision.

(a) *Filing and contents.* The Presiding Officer shall issue and file with the Hearing Clerk an initial decision as soon as practicable after the period for filing reply briefs, if any, has expired. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, the reasons for the findings and conclusions, a recommended civil penalty assessment or other sanction, if appropriate, and a proposed final order. Upon receipt of an initial decision, the Hearing Clerk shall forward a copy to all parties, and shall send the original, along with the record of the proceeding, to the Director.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred, he shall set the dollar amount of the recommended civil penalty in the initial decision in accordance with any criteria set forth in the Act, and must consider any civil penalty guidelines issued by NSF. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended in the complaint, he shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall not raise a penalty from that recommended in the complaint if the respondent has defaulted.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Agency within forty-five (45) days after its service upon the parties and without further proceeding unless (1) an appeal to the Director is filed by a party to the proceedings; or (2) the Director elects, sua sponte, to review the initial decision.

(d) *Motion to reopen a hearing.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision on the parties and shall (1) state the specific grounds upon which relief is sought; (2) state briefly the nature and purpose of the evidence to be adduced; (3) show that such evidence is not cumulative; and (4) show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Hearing Clerk. Parties shall have ten (10) days following service to respond. The Presiding Officer shall grant or deny such motion as soon as practicable. The conduct of any proceeding which may be required as a result of the granting of any motion to reopen shall be governed by the provisions of the applicable sections of these rules. The filing of a motion to reopen a hearing shall automatically stay the running of all time periods specified under these Rules until such time as the motion is denied or the reopened hearing is concluded.

§ 670.70 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory orders or rulings.* Except as provided in this section, appeals to the Director or, upon delegation, to the General Counsel, shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss, or an initial decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the Presiding Officer, upon motion of a party, certifies such orders or rulings to the Director on appeal. Requests for such certification shall be filed in writing within six (6) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any rulings for appeal to the Director when (1) the order or ruling involves an important question of law or policy and there is substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate resolution of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Director or the General Counsel takes no action within thirty (30) days of the certification, the appeal is dismissed. If the Director or the General Counsel decides to hear the interlocutory appeal, he shall make and transmit his findings and conclusions to the Presiding Officer. When the Presiding Officer declines to certify an order or ruling to the Director on interlocutory appeal, it may be reviewed by the Director only upon appeal from the initial decision.

(d) *Stay of proceedings.* The Presiding Officer may stay the proceedings for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstances. Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Director.

§ 670.71 Appeal from or review of initial decision.

(a) *Notice of appeal.* Any party may appeal any adverse initial decision of the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Hearing Clerk and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the

record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. Within twenty (20) days of the service of notices of appeal and briefs, any other party or amicus curiae may file with the Hearing Clerk a reply brief responding to argument raised by the appeallant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall be limited to the scope of the appeal brief.

(b) *Sua sponte review by the Director.* Whenever the Director determines sua sponte to review an initial decision, the Hearing Clerk shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to those issues raised by the parties during the course of the proceeding. If the Director determines that issues raised, but not appealed by the parties, should be argued, he shall give the parties or their respresentatives written notice of such determination to permit preparation of adequate argument. Nothing herein shall prohibit the Director from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument.* The Director may, upon request of a party or sua sponte, assign a time and place for oral argument.

§ 670.72 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Director issues a notice of intent to conduct review sua sponte, the Director shall issue a final order as soon as practicable after the filing of all appeallate briefs or oral argument. The Director shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for his actions. The Director may, in his discretion, increase or decrease the assessed penalty from the amount recommended in the decision or order being reviewed, except that if the order being reviewed is a default order, the Director may not increase the amount of the penalty.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the Hearing Clerk a cashiers check or certified check in the amount of the penalty assessed in the final order, payable to the Treasurer, United States of America.

(c) Money due and owning the United States by virtue of an unappealed final decision or settlement order may be collected by referral to the Department of Justice for appropriate civil action against respondent.

[FR Doc. 88-25728 Filed 11-7-88; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-502, RM-6449]

Radio Broadcasting Services; Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gary L. Violet proposing the substitution of Channel 289C2 for Channel 289A at Winnebago, Nebraska, and the modification of his construction permit for Station KSUX to specify the higher powered channel. Channel 289C2 can be allotted to Winnebago in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north to avoid a short-spacing to Station KFMT, Fremont, Nebraska. The coordinates for this allotment are North Latitude 42-21-21 and West Longitude 96-29-01. In accordance with § 1.420 of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 289C2 at Winnebago or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Esq., Blair, Joyce & Silva, 1825 K Street, NW, Washington, DC 20006 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-502, adopted September 26, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-25757 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-268; DA 88-1633]

Broadcast Service; Advanced Television Systems and Their Impact on the Existing Television Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision and further notice of inquiry; extension of time for filing comments.

SUMMARY: This Order extends the time for filing comments on the *Tentative Decision and further Notice of Inquiry* in MM Docket No. 87-268. (*See* 53 FR 38747, October 3, 1988.) Comments were originally to be filed on or before October 31, 1988, and reply comments

were due by December 1, 1988. These dates have been extended due to the complex nature of the issues raised in this proceeding, and the importance of the advanced television proceeding to the broadcast industry, other media, and to consumers.

DATE: Comments are now due November 30, 1988, and reply comments are due January 9, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Policy and Rules Division, Mass Media Bureau (202) 632-7792.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-25756 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 88-373]

Permit Business Radio Use of Certain Channels in the 150 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment period.

SUMMARY: The Acting Chief, Private Radio Bureau has adopted an *Order* extending the time period in which to file comments and reply comments to the *Notice of Proposed Rule Making* in this proceeding. The new dates are December 14, 1988, for comments and January 6, 1989, for reply comments. This action is taken to allow Teletech, Inc., which requested the extension, additional time to complete a survey of Business Radio Service users to obtain their input about the issues raised by this proceeding. The Bureau stated that such a survey will increase the information contained in the docket and therefore granted the request.

DATES: Comments due December 14, 1988, reply comments due January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The summary of the *Notice of Proposed Rule Making* in this proceeding was printed on September 13, 1988, at 53 FR 35339. An *Order Extending Comment Period* in this proceeding was printed on October 5, 1988 at 53 FR 39114.

Federal Communications Commission.

Beverly G. Baker,

Acting Chief, Private Radio Bureau.

[FR Doc. 88-25754 Filed 11-7-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127-AC46

Federal Motor Vehicle Safety Standards: Rear-view Mirrors; Denial of Rulemaking Petition

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Sure-View, Inc., requesting that Federal Motor Vehicle Safety Standard No. 111 be amended to require that both the driver's and passenger's side of all motor vehicles be equipped with a mirror system consisting of a plane mirror and a convex mirror in the same casing. The agency is denying this petiton for several reasons. First, the standard does not prohibit the installation of convex mirrors on the driver's side as a supplementary mirror or on the passenger's side. Second, the agency is concerned that convex mirrors may distort images and distances and may therefore not be appropriate for all drivers.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington DC 20590. (202) 366-5271.

SUPPLEMENTARY INFORMATION:

Standard No. 111

Federal Motor Vehicle Safety Standard ("FMVSS") No. 111 specifies the requirements for the use, field of view, location, and mounting of rearview mirrors on motor vehicles. The purpose of this standard is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed rearward field of view.

The Standard sets forth separate mirror requirements for passenger cars, multipurpose passenger vehicles, light trucks, heavy trucks, school buses, and motorcycles. With respect to passenger cars, the standard requires that manufacturers mount mirrors of "unit magnification" both inside the vehicle and outside the vehicle on the driver's side. A "unit magnification mirror" is defined in the standard as a plane or flat mirror with a reflective surface through which the angular height and width of the image of an object is equal to the angular height and width of the object when viewed directly at the same distance. The standard specifies detailed field of view requirements for both the interior and exterior mirrors.

In cases where the interior mirror does not meet the specified field of view requirements, either a unit magnification mirror or a convex mirror must be mounted on the passenger's side of the car. A "convex mirror" is defined by the standard as a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere. Any convex mirror used on the passenger side to satisfy the field of view requirements must comply with additional requirements related to the radius of cuvature and bear the warning "Objects in Mirror Are Closer Than They Appear."

In the case of light multipurpose passenger vehicles, trucks and buses (other than schoolbuses), i.e., those with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less, manufacturers may either comply with the passenger car mirror requirements or have outside mirrors of unit magnification with a reflective surface area of not less than 19.5 square inches on each side of the vehicle. These mirrors must be adjustable both in horizontal and vertical positions.

In the case of heavy multipurpose passenger vehicles, trucks, and buses (other than schoolbuses), i.e., those with a GVWR of more than 10,000 pounds, manufacturers must have outside mirrors of unit magnification with a reflective surface area of not less than 50 square inches on each side of the vehicle.

A manufacturer may voluntarily equip a new motor vehicle with additional mirrors to supplement the required ones. These voluntarily-installed mirrors would not be subject to Standard No. 111. For example, a voluntarily-installed convex mirror on a passenger car need not comply with the configuration and marking requirements. However, a voluntarily-installed mirror must not cause a required mirror to fail to provide any required field of view. Similarly, a mirror installed on a used vehicle need not comply with those configuration and marking requirements but, if installed by a vehicle manufactuer, distributor, dealer or repair business, must not interfere with the field of view for any

federally required mirrors. 47 FR 38700, September 2, 1982.

NHTSA is aware that despite these requirements in FMVSS 111, blind spots do exist in a driver's view through a vehicle's mirror system of the area behind the vehicle. The agency notes that such blind spots are a physical reality inherent in the use of plane mirrors on motor vehicles. The agency further recognizes the fact that the use of convex mirrors reduce blind spots. Nevertheless, the agency believes that there are corresponding negative factors related to the use of convex mirrors such as the distortion of distance and image size.

Past Rulemaking Regarding Convex Mirrors

The agency has previously considered the issue of convex mirrors in a number of rulemaking notices. On May 26, 1976, General Motors Corporation (GM) petitioned NHTSA to amend FMVSS 111 to permit the use of convex mirrors on the passenger side of cars and light trucks, where the interior mirror did not meet the field of view requirements of the standard. GM noted in the petition that convex mirrors would provide a wider field of view than the flat mirrors of the same size. On August 26, 1976, NHTSA issued a notice of proposed rulemaking ("NPRM") to amend the standard as requested by GM to allow installation of a convex mirror instead of a plane mirror on the passenger side of those cars and light multipurpose passenger vehicles (MPVs) and trucks required to have an outside mirror on that side. (41 FR 36037). The notice did warn, however, that the agency was concerned about the use of convex mirrors on smaller vehicles by non-professional drivers. Agency tests had indicated that 20 percent of the drivers had difficulty using an outside convex mirror due to distortion problems. The proposal conditioned the equipping of these small vehicles with convex mirrors as a means of complying with the standard on those mirrors being designed in a way intended to minimize the possible problems associated with distance and image distortion. For heavier MPVs and trucks, and for buses, the notice proposed the manufacturers be permitted to use, instead of a large plane mirror, a combination mirror system incorporating a somewhat smaller plane mirror as well as a convex mirror. The NPRM stated that use of both plane and convex mirrors would increase rearward visibility on multipurpose passenger vehicles, trucks and buses with a GVMR of 10,000 pounds or more. Nevertheless, the NPRM further stated that the agency should not make the use of convex mirrors a mandatory requirement for these larger vehicles without the development of appropriate rearview performance requirements.

The 1976 NPRM was incorporated in a broader proposals for a major upgrading of all requirements in FMVSS 111. See 43 FR 51657, November 6, 1978. The 1978 NPRM proposed to permit the use of convex outside mirrors as a means of complying with the standard if those mirrors met certain additional requirements. These additional requirements were designed to reduce or eliminate problems with distortion that some drivers would experience with convex mirrors.

In a final rule dated September 2, 1982, FMVSS 111 was amended to permit the use of convex mirrors on the passenger side of passenger cars and light trucks if the convex mirror adhered to certain requirements. The amendment provided that: The radius of the curvature could not exceed 65 inches and could not be less than 35 inches; the measured radius of curvature of a convex mirror, as specified in the agency's test procedure, could not vary by more than 12.5 percent from the mean radius of curvature; and each mirror must be etched with the readily identifiable words, "Objects in Mirror Are Closer Than They Appear." 47 FR 38698.

The final rule noted that there are several problems associated with convex mirrors. For instance, the image of an object viewed in a convex mirror is smaller than that of the same object seen in a plane mirror.

Because the object will appear to be farther away than it would when viewed in a plane mirror, a driver might perceive that a car is further to the rear than it actually is. In this situation, the driver might change lanes when it is not safe to do so. In determining whether to adopt the proposals concerning the use of convex mirrors, the agency studied the extensive comments addressing the reaction of drivers to the characteristics of convex mirror systems. Some commenters said that a combination of plane and convex mirrors with the resulting differing image sizes would add to the confusion. Some users of convex mirrors also have experienced double vision, eyestrain, and nausea.

Sure-View Petition

M.W. Urban, representing Sure-Veiw Mirrors Inc. (Sure-View), submitted a petition for rulemaking requesting that the agency amend FMVSS 111. Specifically, the petitioner sought performance specifications that would requrie a mirror system containing one plane mirror and one convex mirror fixed in the same casing to be installed on the outside of both the driver's and passenger's sides of a vehicle. The petitioner stated that the petition applied to passenger cars, multipurpose vehicles, trucks, and buses.

Sure-View argued that NHTSA should requrie the use of the convex/plane mirror system because tests by the United States Army at the Aberdeen Proving Ground in Maryland proved this type of mirror should be requried on motor vehicles. The purpose of this 1966 study was to examine, from a human engineering point of view, the basic requirements for rearview mirrors used on large cargo trucks and buses. The army examined rear vision requriements on two military cargo vehicles that were equivalent to most commercial vehicles. While both vehicle types were analyzed graphically, only one, the M123, was field tested. In its laboratory evaluation, the Army compared three types of combination mirrors. One provided for independent adjustment of the convex mirror, while the other two (one of which being the Sure-View mirror) had a fixed relationship between the convex and plane mirrors. The petitioner claims this study demonstrates that a mirror system with a fixed relationship between the plane and convex mirrors should be required for all motor vehicles.

In deciding whether to amend FMVSS 111 to require a convex/plane mirror system, NHTSA has considered and rejected each argument raised in the Sure-View petition, related studies, and a subsequent letter from the petitioner. The reasons for the agency's denial are explained in greater length below.

First, Sure-View argued that the current provisions in FMVSS 111 requiring a plane mirror fail to provide adequate rearward vision for the safe operation of a motor vehicle because such mirrors provide only a downward and outward view that creates blind spots. As mentioned earlier, NHTSA recognizes that blind spots exist to the left and right of most motor vehicles and that this problem is exacerbated on vans, light trucks, and heavy trucks. While NHTSA will continue to explore ways to improve rearward vision, it notes that there are many problems associated with convex mirrors. For instance, a recent comprehensive paper concerning blind spots pointed out that while convex mirrors increase the field of view, such mirrors reduce the size of images, distort the image linearity, cause objects to appear farther away than they actually are, and cause objects to appear to move more slowly than they

actually do. These characteristics associated with convex mirrors can result in drivers making errors in judgment that may cause motor vehicle accidents. Henderson, Robert, et al., *Visibility From Motor Vehicles*, SAE 830564 (1983)

Second, Sure-View argued that NHTSA should require the use of the convex/plane mirror system because tests by the United States Army in 1966 at the Aberdeen Proving Ground in Maryland proved this type of mirror should be required on motor vehicles. On the basis of this study, the petitioner claimed that the optical characteristics to consider in establishing rearview mirror specifications are field of view, magnification and intensity discrimination, brightness, and glare. Although NHTSA agrees that these factors are important in establishing specifications for rearview mirrors, it also notes that other studies (e.g. *Visibility From Motor Vehicles*, SAE 830564) and the Aberdeen test itself suggest that other factors such as the image linearity, the effects on viewer judgment concerning distance and speed, and the vulnerability to adverse weather conditions in establishing mirror specifications should be considered in the development of amendments to the standard.

Third, the petitioner stated that because the Aberdeen tests established the merits of its pre-aligned convex/plane mirror system, it should be mandated by NHTSA under FMVSS 111. The agency disagrees with the conclusion Sure-View draws based on the Aberdeen tests for the following reasons:

(1) Since these tests related to larger vehicles, any standard requiring the petitioner's mirror system on all vehicles would be over inclusive.

(2) The Aberdeen test itself concluded that while wide angle mirrors are preferable, they "demand special experience, judgment, and adaptation." (Aberdeen Test, p. 19)

(3) The fixed relationship of the convex/plane mirrors in a single frame was not a factor in the Aberdeen report. In other words, the critical design element of the petitioner's proposed mirror system was not at issue in the Aberdeen tests on which the petitioner based its petition.

Fourth, Sure-View argued that because Standard No. 111 requires all rearview mirror systems to be independently adjustable, this standard "essentially prohibits the use of the Sure-View mirror system for original vehicle manufacture." NHTSA notes that the existing standard does not require each mirror component to be independently adjustable and does not preclude the optional use of a convex/plane mirror system. A combination convex/plane mirror may be used in conjunction with the plane mirror, as long as one or the other mirror meets the requirements prescribed for mirrors in that location on the vehicle. For instance, a plane mirror on the driver's side of a passenger car must comply with the field of view requirements in S5; a plane mirror on the driver's side of a multipurpose passenger vehicle, truck or bus (other than a school bus) with a GVWR of 10,000 pounds or less must comply with the field of view requirements for passenger cars or have not less than 19.5 square inches of reflective surface; and a plane mirror on motor vehicles over 10,000 GVWR must have not less than 50 square inches of reflective surface. In addition, a convex/plane mirror system may also be installed on the passenger side of the vehicle, provided that one of the mirror's meets S5.3 in instances where compliance with that section is required.

Fifth, Sure-View stated that while Congress authorized NHTSA to issue "performance" standards, it withheld from the agency the authority to issue "design" requirements. The agency agrees that Congress spoke in terms of performance standards rather than design standards in the Safety Act. Section 102(2) of the Safety Act defines a motor vehicle safety standard as "a minimum standard for motor vehicle performance or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria." Although the petitioner argued that the inclusion of the word "performance" in this definition might be taken to suggest the existence of a dichotomy between motor vehicle design and performance, there is in fact no dividing line between standards that regulate performance and those that affect design. In the Congressional debates concerning the Safety Act, Senator Magnuson recognized the absence of any dichotomy when he stated that some safety standards would necessarily determine the configuration of some vehicle components. (112 Cong. Rec. S. 21487) In practice, all of the Federal motor vehicle safety standards necessarily have a strong effect on motor vehicle or motor vehicle equipment design. While the agency strives to promulgate standards that give manufacturers as much design flexibility as possible, it is sometimes necessary to be relatively specific in drafting a standard in order to secure a particular safety goal.

In summary, NHTSA concludes that Sure-View has not shown that the agency should amend FMVSS 111 to require a convex/plane mirror system. For that reason and because the standard does not prohibit the installation of convex/plane mirror systems, the agency is denying the Sure/View petition.

(15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50)

Issued on November 3, 1988.

Barry Felrice,

Assistant Administrator for Rulemaking.

[FR Doc. 88-25784 filed 11-7-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-167]

Request for Expedited Processing; Agency Information Collection Under OMB Review

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We have submitted a proposed information collection requirement, the Egg-Type Poultry Flock Survey, to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act and regualtions (44 U.S.C. Chapter 35; 5 CFR Part 1320). The purpose of the survey is to provide us with informaiton on chicken flocks involved in the Model State Program for *Salmonella enteritidis* Quality Assurance, particularly the numbers of chickens per flock and the numbers of houses containing each flock, in order for us to estimate the levels of materials, services, and training that we will provide for the Program.

DATE: We have requested an expedited review of this submission under the Paperwork Reduction Act, in accordance with 5 CFR 1320.18, to be completed by October 28, 1988.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Regualtory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-167. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Adam G. Grow, Emergency Programs, VS, APHIS, USDA, Room 743, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: One of the purposes of the Model State Program for *Salmonella enteritidis* (SE) Quality Assurance (the Program) is to test certain egg-type poultry breeding and production flocks to determine their freedom from SE, an organism which has caused a serious illness in humans known as Salmonellosis. The Program was developed by a Salmonella Committee of the Northeast Conference on Avian Diseases. Following subsequent state meetings and a public hearing called by the Food and Drug Administration, we were charged with providing certain services for this Program to assist the states and industry in implementing the Program. It is our responsibility to provide antigen for tests, to provide serotyping capabilities, and to assist with epidemiologic tracebacks.

The proposed Egg-Type Poultry Flock Survey (the Survey) would permit us to determine how much additional testing antigen, serotyping capabilities, and epidemiological training will be needed to meet the requirements of the Program. The need for the Survey information is urgent, since states have started to test flocks for SE, and the demand for antigen and serotyping has increased. Therefore, we have requested the Office of Management and Budget to complete its Paperwork Reduction Act review of the information collection provisions on an expedited basis and provide us with its determination by October 28, 1988.

The Survey will collect data on approximately 3000 flocks of egg-type breeding or production chickens. The Survey will involve primarily APHIS Veterinary Medical Officers (VMOs), who will complete the Survey forms, and approximately 400 State Contact Representatives for the National Poultry Improvement Plan, State Extension Poultrymen, and State Extension Veterinarians attached to state universities (referred to below as respondents), who will provide the data the VMOs need to complete the forms. Approximately 3000 owners, operators, or managers of egg-type poultry breeding or production flocks will be nominally involved, since they are the ultimate sources of the information we are seeking through the Survey. However, although these owners, operators, or managers are therefore considered the recordkeepers, we do not believe that they will have to maintain any new records as a result of the Survey, since the information required is commonly used and recorded by these individuals for other business purposes. Further, these individuals will spend very little time responding to inquiries regarding the Survey, since the respondents, because of their continuing professional involvement with these recordkeepers, are generally in possession of the flocks and premises data.

Since we expect to use the Survey for a one-time collection of data, we do not believe the Survey will establish a regular or recurring paperwork burden. An estimate of the total reporting and recordkeeping burden and the estimated average burden hours per response is given below.

Number of Respondents: 400.
Average Number of Responses per Respondent: 7.5.
Total Responses: 3000.
Hours per Response: 0.25.
Total Hours: 750.
Number of Recordkeepers: 3000.
Total Hours per Recordkeeper: 0.1.
Total Recordkeeping Hours: 300.

Done in Washington, DC, this 3rd day of November 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

BILLING CODE 3410-34-M

FORM APROVED
OMB NO. 0579-XXXX

EGG-TYPE POULTRY FLOCK SURVEY

In conjunction with the Model State Program for Salmonella enteritidis, this survey is necessary to enable the National Veterinary Services Laboratory to provide the appropriate amount of antigen and serotyping services for this program. Even though the survey is voluntary, the information is vital for a successful program.

PREMISES OWNER / LEASE HOLDER

1. TELEPHONE NUMBER (A/C)

(Last Name, First Name, MI)

2. NAME

3. ADDRESS

4. CITY

5. STATE

6. ZIP

7. COUNTY

8. FIPS

9. MAP ID.

a. TWP. / X

b. RNG. / Y

c. SEC.

d. LATITUDE

e. LONGITUDE

10. ☐ PRIMARY BREEDING FLOCK
- a. NUMBER OF HOUSES CONTAINING FLOCK
- b. NUMBER OF CHICKENS IN FLOCK

11. ☐ MULTIPLIER BREEDING FLOCK
- a. NUMBER OF HOUSES CONTAINING FLOCK
- b. NUMBER OF CHICKENS IN FLOCK

12. ☐ COMMERCIAL EGG-TYPE PULLET FLOCK (OF 3,000 OR MORE CHICKENS)
- a. NUMBER OF HOUSES CONTAINING FLOCK
- b. NUMBER OF CHICKENS IN FLOCK

13. ☐ COMMERCIAL LAYING FLOCK (OF 3,000 OR MORE CHICKENS)
- a. NUMBER OF HOUSES CONTAINING FLOCK
- b. NUMBER OF CHICKENS IN FLOCK

14. DATE (D D M O N Y Y)

15. INTERVIEWER ID.

INTERVIEWER_____SIGNATURE_____

DEFINITIONS AND DIRECTIONS

OWNER or LEASE HOLDER OF PREMISES - The person, company, cooperative, partnership, corporation, etc. that owns and/or controls the premises which contain the flock listed.

PREMISES - A parcel of land used to raise poultry.

FLOCK - All poultry (chickens) of one kind (breed and variety or combination of stocks) and of one classification on one premises. These chickens can be housed in a single house or in multiple houses.

PRIMARY BREEDING FLOCK - A flock composed of one or more generations maintained for the purpose of establishing, continuing, or improving an egg-laying parent line.

MULTIPLIER FLOCK - A flock whose progeny is intended for the production of table eggs.

COMMERCIAL EGG-TYPE PULLET FLOCK - A flock, under 20 weeks of age, whose intended use is to produce commercial table eggs in the future. Survey only commercial pullet flocks with 3,000 or more chickens.

COMMERCIAL LAYING FLOCK - A flock, usually over 20 weeks of age, used to produce commercial table eggs. Survey only commercial laying flocks with 3,000 or more chickens.

A premises may have a single flock or multiple flocks, so long as each flock is used for a different purpose (i.e., a pullet flock and a commercial laying flock.) If an owner has more than one population group of chickens that is used for the same purpose, but on different premises, then each of these is to be counted as separate flocks on separate premises and will require a survey for each premises.

1. Telephone number of the farm or premises being surveyed. This is usually the telephone number of the farm manager or caretaker of the premises.

2. Name should be recorded by last name, first name, and middle initial of the premises owner or manager. If a company or farm name is to be used, it should be listed first, followed on the second line by the owner or manager's name.

3. Local mailing address of the premises being surveyed. Do not use a post office box number.

7. County where the flock and premises is located.

8. FIPS code, if known, as defined by the National Bureau of Standards for geographical locations.

9. Map location of the premises being surveyed. Map identification is the map being used and can include: the township, range, and section number; the X and Y coordinates if a grid map system is being used; or the latitude and longitude if known.

10-13. Make a check for the type of flock (s) on the premises being surveyed. Record (a.) the number of houses used to contain each flock on the premises and (b.) the total number of birds in the flock.

12-13. Survey only commercial pullet and laying flocks with 3,000 or more chickens.

14. The date the survey is conducted.

15. Interviewer identification is the home telephone number of the person doing the survey interview. The interviewer's name and signature should be at the top of this page.

[FR Doc. 88-25834 Filed 11-7-88; 8:45 am]
BILLING CODE 3410-34-C

Varroa Mite Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to establish Committee.

SUMMARY: The Animal and Plant Health Inspection Service announces its intent to establish an advisory committee to develop a recommended rulemaking proposal designed to prevent the interstate spread of Varroa mites. This committee, called the Varroa Mite Negotiated Rulemaking Advisory Committee, will comprise representatives of parties with a definable stake in the outcome of the proposed rule.

DATE: Consideration will be given only to comments received on or before November 23, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Specifically refer to Docket No. 88–139. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th St. at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Doug Ladner, Senior Staff Officer, Plant Protection Management Systems, Policy and Program Development, APHIS, USDA, Room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1988, we published in the **Federal Register** (53 FR 16536–16538, Docket No. 88–082) an interim rule that, effective May 6, 1988, rescinded the Varroa mite regulations estalbished in an interim rule published in the April 11, 1988, issue of the **Federal Register** (53 FR 11825–11830, Docket No. 87–140).

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been reported in 17 additional states.

The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees within those hives and reducing their ability to pollinate plants and produce honey. Varroa mites multiply quickly, and a beekeeper may fail to notice their presence until serious damage has been done. Tests and treatments for Varroa mite-infested honeybees are available, however. Beekeepers with reason to suspect the presence of Varroa mites can avail themselves of those tests and treatments to protect their hives. The apparent efficacy of those tests and treatments led us to establish federal Varroa mite regulations.

However, information received from federal and state officials, beekeepers, growers, and researchers caused us to conclude that the regulatory program effected to contain the interstate spread of Varroa mites was disrupting agricultural operations dependent on the interstate movement of honeybees. Problems also developed concerning the enforcement of the regulations. Our attempt to contain the interstate spread of Varroa mites had been implemented on the basis of preliminary research reports and of optimistic assumptions about the availability of personnel and the other resources without which federal regulations could not succeed. Having determined that the federal quarantine and the restrictions upon interstate movement of honeybees were unworkable, we rescinded the Varroa mite regulations. That was one month after their implementation.

The comments we have received on the subject of Varroa mite regulations suggest that, while the Animal and Plant Health Inspection Service (APHIS) should again establish a federal regulatory program, we are unlikely to draft a rule that all interested parties would find acceptable. Accordingly, many commenters urged us to work with representatives of these divergent interests, convinced that consensus on Varroa mite regulations is attainable. This encourages us to believe that negotiated rulemaking can, in this case, succeed.

Negotiated Rulemaking

The increasingly formal nature of the rulemaking process can impede an agency attempting to develop sound regulatory solutions to complex problems. The traditional process of comment and reply often generates adversarial relationships among participants, who assume fixed positions for the record. Generally, interested parties submit comments independently, without access to one another's information. This precludes the give and take sometimes necessary to reach agreement on a regulatory issue.

In response to this situation, the Administrative Conference of the United States in 1982 recommended that federal agencies consider regulatory negotiation as a way of achieving consensus-based rules ("Procedures for Negotiating Proposed Regulations," Recommendation No. 82–4, 1 CFR 305.82–4). Since then, the process variously known as "regulatory negotiation" and "negotiated rulemaking" has been used by seven agencies to develop 14 proposed rules. With interested parties mutually committed to working together until they reach consensus on regulatory issues of mutual concern, the experience of those seven agencies shows that the process works.

We therefore intend to estalbish a Varroa Mite Negotiated Rulemaking Advisory Committee, chartered under the Federal Advisory Committee Act (Pub. L. 92–468). The purpose of the Committee is to advise the Department on the content of regulation designed to prevent the interstate spread of the Varroa mite.

The establishment of this Committee is necessary and in the public interest in connection with the duties and responsibilities of the Administrator of APHIS in preventing the interestate spread of plant pests. Duties and responsibilities of the Adminstrator include the promulgation of regulations designed to protect U.S. agriculture from plant pests. The Committee is intended to serve as a public forum, in which interested and affected parties can fully discuss the issues under conditions that provide them with an incentive to resolve differences; to attempt, via face-to-face negotiations, to reach consensus on the terms of a regulation designed to prevent the interstate spread of Varroa mite. Under those conditions, the drafting of a proposed rule acceptable to all interests should be possible.

Key Issues for Negotiations

The primary issue confronting us is that, while APHIS believes that federal leadership in a Varroa mite regulatory program is appropriate, we are unable to identify the components of a workable program.

Among the key issues to be addressed by the Committee, we expect to find the following:

- How should we define critical terms, such as "infestation" and "nondetectable level?"
- What can APHIS and the Agricultural Research Service contribute through technology transfer?
- What survey method(s) should be adopted?
- Should APHIS develop a honeybee certification system?
- What can be expected of treatments, based on the most current

research? Should we permit the treatment of bees during interstate movement?

- Is establishment of quarantined areas appropriate? If so, according to what criteria should we declare an area quarantined? How would we delimit buffer zones around quarantined areas? What criteria would we use to lift a quarantine?
- What would be the roles and responsibilities of interested parties?

Procedures and Guidelines

The following proposed procedures and guidelines would apply to this negotiated rulemaking, subject to appropriate changes made as a result of comments received on this notice or as determined to be necessary during the negotiating process. We note that several preliminary steps have already been taken.

1. *Facilitator.* APHIS will use a facilitator. The facilitator, a neutral third party, will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to chair negotiating sessions, help the negotiations proceed smoothly, and help participants define and reach consensus.

2. *Good faith negotiation.* Since participants must be willing to negotiate in good faith and be authorized to do so, each organization, including APHIS, must designate a senior official to represent its interests.

3. *Administrative support and meetings.* APHIS will provide staff support for the Committee. Meetings will be held in Washington, DC.

4. *Consensus.* The goal of the negotiating process is consensus. Generally, consensus means that each interest concurs in the result. We expect the participants to develop their own working definition of this term.

5. *Record of meeting.* In accordance with the Federal Advisory Committee Act, APHIS will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. APHIS will announce Committee meetings in the **Federal Register.** Meetings will be open to the public.

6. *Committee procedures.* Under the general guidance and direction of the facilitator and subject to applicable legal requirements, the members will establish the detailed procedures appropriate for their Committee meetings.

7. *Schedule.* APHIS plans to convene the Committee, if established, for a three-day session, November 30 and December 1 and 2, 1988, in Washington, DC. The time and location will be published in a Meeting Notice in the **Federal Register** at a later date. To help the Committee meet deadlines, we may schedule additional meetings.

8. *Participants.* The Committee will consist of not more than 25 members and a facilitator or mediator. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether Varroa mite regulations would substantially affect interests not adequately represented by the proposed participants listed in this Notice. We do not believe that each potentially affected organization or individual must have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Equal opportunity practices, in line with U.S. Department of Agriculture policies, will be followed in all appointments to the Committee.

APHIS has tentatively identified the following interests and parties as potential participants in the Varroa Mite Negotiated Rulemaking Advisory Committee:

Beekeeping Organizations

American Beekeeping Federation
American Bee Breeders Association
California Bee Breeders
American Honey Producers Association
Eastern Apicultural Society

Grower Groups

United Fresh Fruit and Vegetable Association
International Apple Institute

Related Industry Groups

American Association of Professional Apiculturists
American Farm Bureau Federation

State Officials

National Association of State Departments of Agriculture
National Plant Board
Apiary Inspectors of America

Federal Government

Animal and Plant Health Inspection Service, USDA

Comments on this tentative list of participants are invited, as are suggestions of other potential participants. In addition to the groups listed above, we have contacted several groups representing consumer and environmental interests, but have been unable to identify any group with a particular interest in this issue. Therefore, we are especially interested in comments on participation by groups representing these areas of interest. Commenters should keep in mind that it is not necessary for every concerned organization to be represented, so long as every significant interest is represented. Also, negotiation sessions will be open to the public; individuals and organizations without designated representatives on the Committee may attend all sessions and communicate informally with members of the advisory committee.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Done in Washington, DC, this 4th day of November 1988.

[FR Doc. 88-25875 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Finding of No Significant Impact; Alabama Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of 230 kV transmission lines and a 230/13.8 kV substation in Monroe County, Alabama.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of two 230 kV transmission lines utilizing both single steel and single concrete support structures and a new 230/13.8 kV substation. Alabama Electric Cooperative (AEC), of Andalusia, Alabama, has requested REA's approval of the project with potential REA financing assistance considered on a post construction basis.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that AEC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate

assessment of the environmental impacts of the proposed project. The project will allow AEC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The proposed transmission lines will loop the existing 230 kV Lowman-Belleville transmission line to the proposed 230/13.8 kV substation to be located on the property of the Alabama River Newsprint facility in Monroe County, Alabama. The parallel circuit 230 kV transmission lines will require new right-of-way (ROW) 175 feet in width to accommodate two parallel lines. The length of each line will be 7.3 miles. The substation will require a 3.7 acre site.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. The substation is located on the Alabama River Newsprint facility site and will not be located in the 100-year floodplain, wetlands or prime farmland. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, alternative line routes and alternative substation sites. REA determined that there is a demonstrated need for the project and constructing it within in the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow AEC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue, SW., Washington, DC 20250 or at the office of Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, AEC published a notice and advertisement in *The Monroe Journal* which has a general circulation in Monroe County, Alabama. The notice appeared in the September 29, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by AEC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850-Rural Electrification Loans and Loan Guarantees. In accordance with 7 CFR Part 3015, Subpart V, and its related **Federal Register** notice (48 FR 29115), this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Dated: November 3, 1988.

Frank W. Bennett,

Acting Assistant Administrator—Electric.

[FR Doc. 88-25832 Filed 11-7-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: *National Oceanic and Atmospheric Administration*

Title: *Oceanic Thermal Energy Conversion Licensing Regulations*

Form Number: *Agency—N/A; OMB—0648-0144*

Type of Request: *Extension of the expiration date of a currently approved collection*

Burden: *Respondents; 1 reporting hour; Average hours per respondent—0 hours estimated—no applications expected—*

Needs and Uses: *Persons wanting to construct, own, or operate an Ocean Thermal Energy Conversion facility or plantship must obtain a license. The information is used to ensure compliance with the requirements of the authorizing legislation*

Affected Public: *State or local governments, businesses or other for-profit organizations, Federal agencies or employees*

Frequency: *On occasion, annual, recordkeeping*

Respondent's Obligation: *Required to obtain or retain a benefit*

OMB Desk Officer: *Francine Picoult 395-7340*

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25788 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Distribution License Procedure

Form Number: Agency—EAR 373.3; OMB—0694-0015

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 62,485 respondents; 73,897 reporting/recordkeeping hours. Average hours per respondent is 1 hour

Needs and Uses: The Distribution License is a "bulk type" licensing procedure developed in response to and advice received from the export community. It is designed to facilitate the export of commodities under large scale international marketing programs.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion, quarterly, recordkeeping

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–25789 Filed 11–7–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Report of Requests for Restrictive Trade Practice or Boycott Single or Multiple Transactions

Form Numbers: Agency—ITA–621P, 6015P; OMB—0694–0012

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1,700 respondents; 35,250 reporting/recordkeeping hours. Average hours per respondent for single transactions is one hour—30 hours for multiple transactions

Needs and Uses: The Export Administration Regulations require U.S. persons to report any requests they have received to take any action to comply with, further, or support an unsanctioned foreign boycott. The information provided is used to monitor such requests. The reports are analyzed to note changing trends and to decide upon actions to be taken to carry out the U.S. policy of discouraging U.S. participation in foreign restrictive trade practices and boycotts directed against friendly countries. The reports are submitted mainly by individuals or organizations that do business in the Middle East

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88–25790 Filed 11–7–88; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket No. 35–88]

Foreign-Trade Zone 15—Kansas City, MO; Application for Subzone; Ortech Motor Vehicle Component Plant, Kirksville, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc. (KCFTZ), grantee of FTZ 15, requesting special-purpose subzone status for the motor vehicle component manufacturing plant of Ortech Company (a joint venture partnership between Orscheln International Company, a Missouri corporation, and Yuhshin USA, Ltd.), located in Kirksville (Adair County), Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 26, 1988.

The Ortech plant (36 acres) is located at 2806 North Industrail Road, within the Kirksville Industrial Park, Kirksville, some 150 miles northeast of Kansas City. The plant will be used to produce electronic/mechanical components for motor vehicles, such as controls, signaling devices, clocks, touring computers, locks, latches, handles and knobs. The application indicates that the components made at the plant will displace components currently being produced in Japan. At the outset, Ortech plans to mostly use foreign parts and material, including resistors, relays, terminals, switches, conductors, junction boxes, control panels, instruments, locks, latches, fittings, mountings and indicator panels. However, the company expects to source 75 percent of its parts and material domestically within 4 years. Most of the finished components will be shipped to domestic auto assembly plants.

Zone procedures would exempt Ortech from Customs duty payments on foreign materials and components that are reexported as auto parts. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rates on materials and components range from 0.0 to 6.5 percent, whereas the rate on autos is 2.5 percent. The applicant indicates that the savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and, Colonel John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106–2896.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 22, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 635, 601 East 12th Street, Kansas City, MO 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230

Dated: November 2, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–25786 Filed DS–7–88; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 34-88]

Foreign-Trade Zone 78, Nashville, TN; Extension of Time Limit for Subzones 78C and 78D Tennessee Valley Authority Equipment Storage Facilities, Hartsville and Phipps Bend, TN; Correction

Correction

In notice document 88-25115 appearing on page 43748 in the issue of Friday, October 28, 1988, the District Engineer appointed for this case should read: Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202-1070.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-25787 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-801]

Preliminary Determination of Sales at Less Than Fair Value; Certain Headwear from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain headwear from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We also preliminarily determined that critical circumstances exist with respect to imports of certain headwear from the PRC. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of certain headwear from the PRC as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by January 16, 1989.

EFFECTIVE DATE: November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1130 or 377-2923.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain headwear from the PRC is being, or is likely to be sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 23300, June 21, 1988), the following events have occurred. On July 11, 1988, the ITC found that there is a reasonable indication that imports of headwear from the PRC are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 2096, July 1988).

On August 10, 1988, we presented a questionnaire to counsel for China National Arts & Crafts Import & Export Corporation and China National Light Industrial Products Import & Export Corporation, major PRC exporters of the subject merchandise to the United States. On September 26, 27, 29, and October 4, 7, and 13, we received replies to this questionnaire from eight respondents who now claim to be operating as independent export trading companies rather than as branches of these firms.

Universal Hats and Caps Manufacturing Company, Ltd. and Universal Trading Company (Universal) have asked to participate in this proceeding as a respondent. Universal is a Hong Kong company which supplies materials to the PRC factories for conversion into headwear under processing fee arrangements with the PRC trading companies. Universal argues that it should be treated as the producer and exporter of the headwear sold under processing fee arrangements.

In other proceedings involving processing fee-like arrangements, we have treated the processor as the producer/manufacturer/exporter and have based United States price on the price paid for processing. (See, *e.g., Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines, Final Determination of Sales at Less Than Fair Value*, (51 Fr 33099, September 18, 1986), (*Pipes and Tubes from the Philippines*); *Brass Sheet and Strip from Canada, Final Determination of Sales at Less Than Fair Value*, (51 FR 44319, December 9, 1986), (*Canadian Brass Sheet and Strip*).)

Moreover, under Department practice, where a producer knows that the merchandise is destined for the United States, we base United States price on the price charged by the producer. In this case, the PRC companies are aware that the processing fee sales are destined for the United States because they must supply the export visas required under the U.S.-PRC bilateral textile agreement.

For these reasons, we notified Universal and Golden Crown, another Hong Kong company which supplies materials to the PRC factories for conversion into headwear under processing fee arrangements, on September 7, 1988, that we would not be sending them a questionnaire nor considering a questionnaire response from them.

Standing

The Department and the ITC have received letters from RCC; Weisman Novelty Company, Inc.; Manhattan Miami Sales Company; Betty Ann American Sales Corporation; Arlington Hat Company, Inc.; Triangle Sport Headwear Company, Inc.; Jacobson Hat Company, Inc.; Diversified Graphics, Inc.; Headwear U.S.A., Ltd.; Midway Chinese Products Inc. and Universal Headwear Industries indicating that the petitioner did not speak on behalf of, or represent, their organization. On July 25, 1988, we received a letter from the respondents challenging Headwear Institute of America's (HIA) standing to file the petition and requesting dismissal of the petition on the grounds that the petition was not filed "on behalf of" the United States industry, as required by section 732(b)(1) of the Act.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition * * * on behalf of an industry" (section732(b)(1) of the Act). As we have stated in prior cases (*see e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987); *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)), the Department relies upon the petitioner's representation that it has filed "on behalf of" the domestic industry until it is affirmatively shown that a majority of the domestic industry opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the

members of the relevant domestic industry support the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry. As we have noted in other cases, to require a petitioner to establish affirmatively that it has the support of a majority of the industry on whose behalf it has filed the petition would, in many cases, "be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws." *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value* (52 FR 8324, 8325, March 17, 1987).

When a member (or members) of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the Department will examine the challenge. When evaluating the challenge, the Department does not consider a statement by a member of the domestic industry that it does not take any position with respect to the petition as evidence of opposition to a petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a majority of the domestic industry. Commerce tailors its examination of opposition to the particular facts of the case. Typically, the Department does not canvass the entire domestic industry. Instead, it generally requests the opponent to supply information on the nature and extent of its involvement in the domestic industry. By accumulating the proportion of the domestic industry that is represented by each of the parties in opposition, the Department is able to determine the degree of opposition overall. This was the course followed by the Department in this case.

On August 12, 1988 and August 29, 1988, we sent letters and questionnaires to the aforementioned companies requesting information as to the nature and extent of the companies' activities, including their production of headwear in the United States and their percentage share of the United States market. We received three replies, which together represented less than five percent of the United States market.

Absent evidence of opposition to the petition by other members of the domestic industry, the Department has no basis to conclude that a majority of the industry opposed the petition. Therefore, the Department preliminarily determines in this case that the petition was filed on behalf of the domestic industry, and that the petitioner has standing to bring this petition.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule ("HTS"). Until that time, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Wasington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this investigation are caps, hats, and visors made from knitted or woven cloth of vegetable fibers including cotton, flax, and ramie, of man-made fibers, and/or of blends thereof, and which is cut and sewn. The subject headwear may be adorned with braid, embroidery, or other applied, printed or sewn decoration of may be plain. This investigation does not include headwear of straw, felt or wool. The products are classified under the TSUSA item numbers 702.0600, 702.0800, 702.1200, 702.1400, 702.2000, 702.3200, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, 703.1650, 384.0438, 384.0954, 384.2211, 384.2608, 384.2707, 384.2723, 384.2741, 384.2752, 384.2784, 384.2796, 384.3436, 384.5216, 384.5365, 384.5427, 384.5485, 384.5533, 384.5685, 384.5698, 384.8676, 384.9443 and currently classifiable under HTS item numbers 6505.90.15, 6505.90.20, 6505.90.25, 6505.90.90, 6502.00.20, 6502.00.90, 6504.00.90, 6505.90.50, 6505.90.70, 6505.90.60, 6505.90.80, 6114.20.00, 6211.42.00, 6114.30.30, 6211.43.00, 6114.30.20, 6104.49.00, 6204.51.00, 6204.23.00, 6204.29.40, 6211.32.00, 6110.90.00, 6204.12.00, 6211.49.00.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

For this merchandise, there are two types of sales: processing fee and non-processing fee. Consistent with past practice, we have based United States price for the processing fee sales on the price received for converting the purchasers' materials into headwear. (*See, e.g., Pipes and Tubes from the Philippines, Canadian Brass Sheet and Strip*). Foreign market value for processing fee sales has been calculated by valuing the factors of production employed by the PRC manufacturers in performning the conversion in a non-state-controlled economy country, as described in the "Foreign Market Value" section of this notice.

For non-processing fee sales, the United States price is based on the prices charged by the PRC trading companies for finished headwear. The foreign market value for these sales has been calculated using home market sales in a non-state-controlled economy or PRC factors of production valued in a non-state-controlled economy, as described in the "Foreign Market Value" section of this notice.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF prices with deductions, where applicable, for ocean freight, marine insurance, and for non-processing fee sales, an adjustment for related value-added tax.

Foreign Market Value

The petitioner has alleged that the PRC is a state-controlled economy and, therefore, that sales of headwear in the PRC do not permit a determination of foreign market value under section 773(a) of the Act. The PRC trading companies, however, argue that as a result of economic reforms in the PRC, particularly with respect to the headwear industry, state control is not so great as to preclude the determination of foreign market value under section 773(a).

As a result of the trading companies' argument, we sent a questionnaire to the trading companies on August 29, 1988, seeking information on: (1) The degree of government ownership of the means of production; (2) the degree of centralized government control over input "markets;" (3) the degree of centralized government control over output "markets;" and (4) the relative

convertibility of the country's currency and the degree of government control over trade. We had identified these criteria as the bases for determining whether a country is state-controlled within the meaning of section 773(c) in *Petroleum Wax Candles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value* (51 FR 25085, July 10, 1986), (*Candles*).

We received responses to our questionnaire on September 26 and October 7. The responses provide the following information:

The Degree of Government Ownership of the Means of Production: The trading company respondents in this investigation are local branches of the state-owned trading companies, China National Arts and Crafts Import and Export Corporation and China National Light Industrial Products Import and Export Corporation. According to information submitted by the trading companies, the local branches have operated as autonomous entities since January 1, 1988 and are now responsible for their own profits and losses. The trading companies are also subject to the bankruptcy law. After-tax profits for these firms go toward employee welfare and benefits, business expansion, and retained earnings. While none of the trading companies sustained a loss during the period of investigation, these companies claim that losses would be financed through retained earnings or through borrowing.

With respect to the factories producing headwear for the United States market, four of them are state-owned, 16 are collective-owned and six are foreign-owned enterprises. (The foreign-owned factories are owned in conjunction with collectives.) According to the responses, the factories' after-tax profits are used for worker welfare and bonuses, and for business promotion and expansion. Like the trading companies, the responses claim that any losses incurred by the factories would have to be financed out of retained earnings or through borrowing. The factories' business or production plans are not reported to the government. Finally, management in the state-owned factories is usually selected by the workers, sometimes with formal approval by the local government. Management in the collective-owned firms is selected by the collective. Foreign owners appoint the management of the foreign-owned factories.

The Degree of Government Control Over the Input Markets: The major physical inputs used in producing the headwear under investigation are cotton and polyester. The decision of which inputs to use is based on customer specifications. The materials for processing fee sales are received from the Hong Kong customers. With respect to other sales, the polyester is imported and all such importations are through the trading companies, according to the responses.

Cotton is purchased domestically from state-owned enterprises and collectives. The choice of suppliers is based on the prices charged and the availability of supply. According to the responses, prices between the factories and their suppliers are set through arm's length negotiations and the quantities supplied are determined by the parties. There are no government policy directives applying to these decisions.

Non-physical inputs include capital, labor and energy. Electricity and water are supplied by state-owned enterprises at prices established by those enterprises. Capital equipment is frequently imported, according to the responses.

With respect to labor, the responses state that wages are established by the factory owners and that there are no general restrictions on seeking new employment. Additionally, there are no government restrictions on the hiring of workers and workers may be fired for cause. Compensation for workers includes wages, welfare benefits and bonuses, which are usually based on performance.

According to the responses, the overall level of credit is controlled by the central authorities, but loans to individual enterprises are decided upon by individual banks based on the applicant's creditworthiness. The interest rate charged is determined by the individual bank.

The Degree of Government Control Over Output Markets: There are three types of prices in the PRC: State-controlled (set by the government), guidance prices (prices which are permitted to fluctuate within a band around a state-controlled price), and market prices (set without government intervention). Respondents' submissions state that all headwear produced for domestic sale in the PRC falls into the third category. Moreover, they claim that decisions by the factories on what merchandise to produce are not subject to government direction.

Sales of headwear to be exported to the United States are negotiated between the factories and the trading companies. The trading company will place an order with the factory and prices are negotiated at arm's length. The decision of which factory to approach is based on the type of headwear involved and the available capacity at the factory.

Export sales by the trading companies depend on foreign demand. After receiving an order, the trading company will seek a price quote from a factory. The trading company then adds an amount to cover its profit and overhead. According to the responses, the trading companies' decisions are not subject to government review and no policy directives apply to these decisions.

Currency Convertibility and the Degree of Government Control Over Trade: According to the responses, the PRC has an official exchange rate and a market exchange rate. The official rate applies to foreign exchange remitted to the central government. The market rate refers to the foreign currency adjustment price negotiated by buyers and sellers in the recently opened foreign exchange adjustment centers. All state-owned, collective-owned and foreign-owned enterprises have access to these centers, regardless of whether they export.

Respondent's submissions state that the trading companies can keep up to 70 percent of their foreign exchange earnings, while those involved in processing arrangements can retain up to 90 percent of their foreign exchange income. A portion of these retained earnings are then returned to the factories based on terms arrived at through negotiation between the parties.

According to the responses, there are no restrictions on imports of headwear into the PRC, and the only controls on headwear exports to the United States are the visas required under the U.S.-PRC bilateral textile agreement. Headwear exports to countries other than the United States with which the PRC does not have a textile agreement are not subject to any restrictions.

Petitioner has also filed submissions on the issue of state control in this proceeding. According to the petitioner, the respondents are state-owned andd the factories are owned and/or controlled by the PRC central and local governments. Indeed, they assert, factories may not be constructed or expanded, nor can they improve production processes by purchasing imported machinery or equipment, without government approval.

The supply of cloth, the major raw material in headwear, is controlled by the Ministry of Textile Industry, which sets output quotas and prices for textile mills. Headwear factories are allocated a certain amount of fabric by the state, and must receive approval and an allocation of foreign exchange to order imported cloth. Wage scales are centrally determined, managers are not free to hire and fire workers, and the workers themselves are not free to move to different employment opportunities.

The petitioner further contends that foreign purchasers cannot negotiate directly with the factories; instead, they can only deal with the trading companies, which determine the product orientation, scale of production, and sales prices and quantities for headwear manufacturers. The PRC government limits the right to export products under the relevant product category (category 359–0) of the Multifiber Arrangement. The allocation under that category for headwear is small due to its low value in relation to higher-valued non-headwear products also covered by that category.

In addition, petitioner maintains that the currency of the PRC, the renminbi, is fundamentally inconvertible. The government tightly controls the supply of foreign currency and allocation of foreign exchange. The official rate has been essentially pegged to the U.S. dollar at a constant rate since the fourth quarter of 1986. The use of foreign exchange swap centers is still commercially insignificant, and all transactions in these centers must be approved by the State Administration of Exchange Control, which has imposed a yuan (the unit of currency)/U.S. dollar ceiling rate.

Finally, petitioner also states that section 773(c) requires the Department to examine whether the PRC economy in general is state-controlled, rather than analyzing the headwear sector in particular. For the reasons explained below, we do not need to address this issue for the preliminary determination.

Based upon our review of the record in this investigation, we have concluded that information pertaining to certain key issues is unpersuasive. For example, the trading companies involved in exporting headwear to the United States may be subject to export earning targets. Furthermore, the responses indicate that headwear manufacturers choose their suppliers "based on price and availability of supply," and that "to the best of the trading company's knowledge, prices and quantities are set in a similar manner when these suppliers sell to other customers in the domestic market." However, like most agricultural products, raw cotton appears to be purchased under contract between the growers and the government. Therefore, the prices and quantities supplied for a major input into headwear may be heavily influenced by direct government involvement in its distribution.

We note that a similar claim of no state control was made in *Candles*. In that case, respondents made in their written submissions a plausible case for finding an absence of state control with respect to the candle industry in the PRC. However, upon verification, the Department found that the actual situation concerning the production and sale of candles in the PRC was much more complicated than the situation described in respondents' written submissions. At vertification, the Department found that, indeed, economic reform in the PRC had resulted in a lessening of state control. The candle factories investigated were managed by, or operated under the auspices of, collectives, and their output was not subject to quotas or price controls.

On the other hand, the Department found that the principal input, petroleum wax, remained subject to state control. The Department concluded in that case that the extent of state control in the PRC at that time continued to be too great to permit the use of section 773(a).

In every prior antidumping investigation involving the PRC, the Department has found the PRC to be state-controlled. In addition, our experience in *Candles* taught us that verification is extremely important in determining whether an industry is substantially unaffected by state control. Therefore, given the conflicting, and as yet unverified, evidence on the record, the continued importance of state economic planning in the PRC generally, and the importance and complexity of the issue, we are not persuaded at this time that the headwear sector is substantially free of state control.

Accordingly, we preliminarily determine that the PRC is state-controlled to such an extent as to preclude the use of section 773(a). In making this preliminary determination, we are particularly influenced by the facts that the trading companies may be subject to foreign exchange targets and that the principal input obtained domestically, cotton cloth, may still be subject to state control, as well as by the conflicting evidence concerning foreign exchange controls, especially the convertibility of the renminbi.

However, we intend to conduct a thorough verification of this issue. If, as a result of our verification, we conclude that economic reforms in the PRC have resulted in a sufficient lessening of state control with respect to the headwear industry, in our final determination we will determine whether to calculate foreign market value pursuant to section 773(a). In this regard, we are issuing our standard antidumping questionnaire to respondents so that we will be able to use section 773(a), if warranted, in our final determination.

As a result of our preliminary determination to treat the PRC as a state-controlled economy, section 773(c) of the Act requires us to use either the prices of or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the state-controlled-economy country.

We determined that Indonesia, Egypt, Morocco, Bolivia, the Dominican Republic, Jamaica, Paraguay, Zambia and the Philippines were at a level of economic development comparable to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of headwear in the Philippines, Morocco and Jamaica. One manufacturer from the Philippines replied to our questionnaire.

Where possible, we used information on domestic sales provided by this "surrogate" producer as the foreign market value for PRC sales of polyester baseball hats. For processing fee sales, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers in performing the conversion using factor cost information provided by the surrogate. For sales of cotton hats, we constructed foreign market value by valuing the factors of production employed by the PRC manufacturers based on factor cost information provided by the surrogate for all elements except the cotton input. For the value of the cotton input, we based the factor information on the prices of imports into the U.S. from Egypt. FMV based on valuing factors of production includes the statutory minimum for SG&A and profit.

On October 28 the surrogate provided additional information through the U.S. Embassy in the Philippines. We did not receive that information in time to adjust our calculations for the preliminary determination. However, we will consider that information in our final determination should we continue to use the "factors" methodology.

Currency Conversions

When evaluating U.S. sales made in Hong Kong dollars, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Because we did not have certified exchange rates from the Federal Reserve Bank of New York for surrogate country data, as best information we used currency conversions based on monthly averages as provided by the International Monetary Fund.

Critical Circumstances

The petition alleged that imports of headwear from the PRC present "critical circumstances." Under section 773(e)(1) of the Act, "critical circumstances" exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 773(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we analyzed recent trade statistics on import levels for headwear from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on this analysis, we find that there is a reasonable basis to believe or suspect that imports of the subject merchandise from the PRC have been massive over a relatively short period of time subsequent to receipt of the petition.

We examined recent antidumping duty cases and found that there are currently no findings in the United States or elsewhere of dumping of the subject merchandise by the PRC manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient (See, *e.g., Final Antidumping Duty Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy* (52 FR 24198, June 29, 1987)). Since the estimated margins for three of the eight trading companies exceed 25 percent, as shown below, we find that the requirements of section (e)(1)(A) are met for these companies. Therefore, the following chart sets forth our company-specified preliminary determinations with respect to the existence of critical circumstances for the investigated merchandise.

Manufacturerer/producer/exporter	Critical circumstances
China National Light Industrial Products Import Export Corp., Guangdong Branch, Travelling Goods Co.	Yes.
China National Light Industrial Products Import Export Corp., Guangdong Stationery & Sporting Goods Branch.	No.
China National Light Industrial Products Import/Export Corp., Guangzhou Branch Footwear and Headgear Co.	Do.
Guangdong Arts & Crafts Imports & Exports Corp.	Do.
Jiangsu Arts & Crafts Imports & Exports Corp.	Do.
Shanghai Arts & Crafts Imports & Exports Corp.	Do.
Shanghai Stationery and Sporting Goods Import/Export Corp.	Yes.
Zhejiang Arts & Crafts Import & Export Corp.	Do.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain headwear from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We have preliminarily determined that critical circumstances exist with respect to entries of the subject merchandise from the following three companies: China National Light Industrial Products Import/Export Corporation, Guangdong Branch, Travelling Goods Company; Shanghai Stationery and Sporting Goods Import/Export Corporation; and Zhejiang Arts & Crafts Import & Export Company; (see "Critical Circumstances" section of this notice). Therefore, we are instructing the U.S. Customs Service to suspend liquidation of such entries from these companies that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**, in accordance with section 733(e)(2) of the Act. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
China National Light Industrial Products Import/Export Corp., Guangdong Branch, Travelling Goods Co	[1] 26.06
China National Light Industrial Products Import/Export Corp., Guangdong Stationery & Sporting Goods Branch	[1] 8.61
China National Light Industrial Products Import/Export Corp., Guangzhou Branch Footwear and Headgear Co	[1] 22.86
Guangdong Arts & Crafts Imports & Exports Corp	[1] 15.44
Jiangsu Arts & Crafts Imports & Exports Corp	24.47
Shanghai Arts & Crafts Import & Export Corp	9.77
Shanghai Stationery and Sporting Goods Import/Export Corp	58.85
Zhejiang Arts & Crafts Import & Export Co	52.78
All Others	20.76

[1] Because we made fair value comparisons on the basis of processing charges, the resulting differences for these companies have been multiplied by a coefficient equalling the proportion processing represents of the value of PRC hats to arrive at the margins for individual sales. The coefficient is based on our review of the cost and sales experience of Shanghai Stationery and the surrogate producer in the Philippines.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry before the later of 120 days after we made our preliminary affirmative determination or 45 days

after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on December 30, 1988, at the United States 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 10 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 reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by December 23, 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, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: November 2, 1988.

[FR Doc. 88-25785 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-05-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Monday, November 28, 1988 from 1:00 p.m. to 5:30 p.m., and Tuesday, November 29, 1988 from 8:30 a.m. to 1:30 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

DATES: The meeting will convene November 28, 1988, at 1:00 p.m. and will adjourn for the day at 5:30 p.m. The meeting will resume at 8:30 a.m. on November 29, 1988, and will end at 1:30 p.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Peggy Webb, Office of the Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2411.

SUPPLEMENTARY INFORMATION: The public is invited to attend this meeting, and the Chairperson will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb at the address shown above.

Date: November 2, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-25746 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool 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 Commissioner Customs adjusting limits.

EFFECTIVE DATE: November 2, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 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 Group II is being increased by application of swing, reducing the Group III limit to account for the swing being applied.

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 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.

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 textiles and textile products, produced or manufactured in the People's Republic of 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 hereby amended to adjust the current limits for cotton, wool and man-made fiber textile products in Groups II and III, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-month limit [1]
Group II: 330, 332, 349, 353, 354, 359-O [2], 431, 432, 459, 630, 632, 633, 643, 644, 653, 654, 659-O [3], as a group.	127,890,000 square yards equivalent

Category	Adjusted 12-month limit [1]
Group III: 201, 220, 222-225, 227, 229, 362, 369-O [4], 400, 414, 464-469, 600, 603, 604-O [5], 606, 618-622, 624-627, 628, 629, 665, 666, 669-O [6], 670-O [7], as a group.	322,919,000 square yards equivalent

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 359-O, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359-C; 384.5214 in Category 359-D; and 381.0258, 281.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, 384.4422 in Category 359-V.

[3] In Category 659-O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310 in Category 659-C; 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659-H; and 381.2340, 381.3170, 381.9100, 381.9570, 381.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659-S.

[4] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369-D; 706.3640 and 706.4106 in Category 369-H; 706.3210, 706.3650 and 706.4111 in Category 369-L; and 366.2840 in Category 369-S.

[5] In Category 604-O, all TSUSA numbers except 310.5049 and 310.6045.

[6] In Category 669-O, all TSUSA numbers except 385.5300 in Category 669-P.

[7] In Category 670-O, all TSUSA numbers except 706.3415, 706.4130 and 706.4135 in Category 670-L.

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. 88-25740 Filed 11-7-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Subcontracting Report for Individual Contracts.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Vs. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523-5168.

SUPPLEMENTARY INFORMATION: a. *Purpose*: In accordance with the Small Business Act (15 U.S.C. 631 *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act (Attachment A) and implemented in FAR 19.7 (Attachment B).

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Subcontracting Report for Individual Contracts (Attachment C).

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on SF 294 is used to assess contractors' compliance with their subcontracting plans.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, *1,533*; responses per respondent, *34.47*; total annual responses, *52,850*; preparation hours per response, *5.71*; and total response burden hours, *301,774*.

c. *Annual recordkeeping burden*: THe annual recordkeeping burden is estimated as follows: Recordkeepers, *1,533*; hours per recordkeeper, *116.87*; and total recordkeeping burden hours, *179,161*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0006, SF 294, Subcontracting Report for Individual Contracts.

Dated: October 31, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-25759 Filed 11-7-88; 8:45 am]

BILLING CODE 6820-60-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Summary Subcontract Report.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523-5168.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* In accordance with the Small Business Act (15 U.S.C. 631 *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in the Section 8(d) of the Small Business Act and implemented in FAR 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294,

Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,542*; responses per respondent, *3.61*; total annual responses, *5,567*; preparation hours per response, *15.89*; and total response burden hours, *88,445*.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *1,542*; hours per recordkeeper, *12.6*; and total recordkeeping burden hours, *19,429*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0007, SF 295, Summary Subcontract Report.

Dated: October 31, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–25760 Filed 11–7–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF JUSTICE

Agreement Between the General Services Administration and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for State Agencies and Donee Organizations

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (28 CFR 42.401–.415); increase the efficiency of compliance activities, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement, the General Services Administration (GSA), designates the Department of Education (DOE), as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to elementary and secondary schools and institutions of higher education. Responsibilities for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4).

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice (DOJ)/Equal Employment Opportunity Commission (EEOC), regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance (28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570, January 25, 1983). Complaints covered by that regulation, filed with a delegating agency against a recipient of Federal financial assistance, solely alleging employment discrimination against an individual, are to be referred directly to the EEOC by the delegating agency.

C. Duties of the DOE

The GSA assigns the following compliance duties to the DOE with respect to elementary and secondary schools and institutions of higher education. Specifically, the DOE shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to GSA.

2. Develop and use information for the routine, periodic monitoring of compliance of elementary and secondary schools and institutions of higher education with respect their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by GSA, preapproval reviews for which supplemental information, or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients, subject to this agreement, have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, and attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that: (a) Advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation; (b) provides recommendation, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The DOE promptly shall provide a copy of its letter of findings to the GSA and to the Assistant Attorney General for Civil Rights, as required by 28 CER 42.407(d).

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the DOE does not fund the applicant or recipient, refer the matter to GSA for its own independent action and notify the Assistant Attorney General for Civil Rights of referral. (b) If compliance cannot be achieved and both the DOE and GSA fund the applicant or recipient, initiate formal enforcement action. When the DOE initiates formal

enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide GSA with an opportunity to participate, as a party, in a joint administrative hearing. When the DOE initiates formal enforcement action be referring the matter to the DOJ for appropriate judicial action, notify GSA of the referral.

9. Notify GSA and the Assistant Attorney General for Civil Rights, of the outcome of the hearing, including the reason for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

D. Duties of the General Services Administration

The GSA shall:

1. Issue and provide to DOE all regulation guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provision and for DOE to administer its responsibilities under this agreement.

2. Provide DOE with information, technical assistance, and training necessary for DOE to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from GSA, the types of assistance provided, compliance information solely in GSA possession or control, and data on program eligibility or control, and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by DOE. If GSA requests DOE to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance, or that is the subject of an application, GSA shall supply information necessary for the DOE to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with GSA against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from GSA.

5. Where DOE has notified the applicant or recipient, in writing, that compliance cannot be achieved by voluntary means and DOE has referred the matter to GSA, make the final compliance determination with respect to a GSA applicant or recipient and:

(a) If GSA wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify DOE if GSA will either join as a party in a DOE administrative hearing or will conduct its own administrative hearing.

(b) Whenever an opportunity for a hearing is required, GSA will notify the applicant or recipient by registered or certified mail, return receipt requested. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken and the matters of fact of law asserted as the basis for this action. GSA will also notify the DOE and the Assistant Attorney General for Civil Rights of the outcome of the hearing including the reasons for finding the applicant or recipient in noncompliance, and any action against the applicant or recipient. GSA may request DOE to act as counsel in its administrative hearing.

(c) When GSA initiates formal enforcement action by referring the matter to the DOJ for appropriate judicial action, notify the DOE of the referral.

(d) If GSA neither initiates steps to deny or terminate Federal assistance, nor refers the matter to the DOJ, notify DOE and the Assistant Attorney General for Civil Rights, in writing within 15 days after notification from DOE that voluntary compliance cannot be achieved.

E. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement regarding elementary and secondary schools and institutions of higher education between GSA and the DOE published in the **Federal Register** (FR 4148, Vol. 32, No. 51, March 16, 1967).

F. Redelegation

Duties delegated herein to the DOE may be redelegated to the Department of Health and Human Services. The DOE shall notify GSA of any such redelegation prior to the effective date.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the **Federal Register.**

H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Date: May 4, 1988.

John Alderson,

Acting Administrator of General Services Administration.

Date: July 18, 1988.

William J. Bennett,

Secretary of Education.

Date: September 15, 1988.

Wm. Bradford Reynolds,

Assistant Attorney General, Civil Rights Division, Department of Justice.

[FR Doc. 88-25844 Filed 11-7-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America, and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the shipment of 5 kilograms of spent fuel from the GRR-1 reactor in Greece for storage and reprocessing at the Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: November 2, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-25824 Filed 11-7-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Environment, Safety and Health

Innovative Control Technology Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: November 30, 1988—1:30 p.m.–5:00 p.m.

Place: Dow Chemical Louisiana Division, Louisiana Highway No. 1 South, Plaquemine, Louisiana 70865, Purchasing Lobby.

Date and Time: December 1, 1988—9:00 a.m.–3:00 p.m.

Place: Fairmont Hotel, University Place, New Orleans, Louisiana 70112.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH–22), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- Projects selected in DOE Clean Coal-2 Solicitation.
- Project Selection Criteria to be considered for Clean Coal Technology Program (CCTP–3).
- Working Group on "Technology Status Review and Evaluation" Report.
- Working Group on "Incentives for the Demonstration and Deployment of Clean Coal Technologies" Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at WAshington, DC, on November 2, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–25822 Filed 11–7–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–65–NG]

Hadson Gas Systems, Inc., Application to Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 14, 1988, of an application filed by Hadson Gas Systems, Inc. (Hadson), requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 144 and 144A, issued September 9, 1986, and March 31, 1987, respectively (ERA Docket No. 86–35–NG), be amended to extend its term for two years.

Hadson is currently authorized to import up to a maximum of 50 Bcf of Canadian natural gas through March 2, 1989. Under the extension requested, Hadson would be authorized to import volumes not to exceed in the aggregate 50 Bcf of Canadian natural gas over a two-year period commencing March 3, 1989.

Quarterly reports filed with the ERA indicate that Hadson has imported 4239 MMcf of natural gas under its current import authorization as of June 30, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as aplicable, requests for additional procedures and written comments are to be filed no later than December 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy Forrestal Building, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–7249.

Diane Stubbs Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION: Hadson Gas Systems, Inc., an Oklahoma corporation, is a wholly-owned subsidiary of Hadson Corporation, a Delaware corporation. Hadson is an independent coast-to-coast gas marketing business, with its principal place of business in Irving, Texas. Hadson purchases its system supplies from hundreds of producers, both domestic and Canadian, and sells to hundreds of customers. The extension would cover Canadian natural gas imported by Hadson on a short-term or spot basis for resale to undesignated U.S. purchasers.

The specific terms of the Canadian import sales would be negotiated at arms length, including the price, duration, volume renegotiation, and price adjustment provisions, and take-or-pay provisions, if any. Hadson intends to use existing pipeline facilities to transport the gas.

In support of its application, Hadson asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidlines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., December 8, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Hadson's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Firday, except Federal holidays.

Issued in Washington, DC, November 1, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25825 Filed 11-7-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9078-002 California]

Highland Construction, Inc.; Availability of Environmental Assessment

November 3, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption for the Cove Hydroelectric Project and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25808 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. CP89-89-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-89-000]

November 1, 1988.

Take notice that on October 25, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-89-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Tenneco Oil Company under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 20, 1988, it proposes to transport up to 2,200 dt of natural gas for Tenneco Oil Company, a producer, from points of receipt located offshore Louisiana. The point of delivery is located offshore Louisiana, and the ultimate point of delivery is located in the state of Wisconsin.

The Applicant further states that the maximum daily quantity it proposes to transport is 2,200 dekatherms, the average daily volume is 2,200 dt, with an annual delivery of 803,000 dt, under the contract. Service under § 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89-242 (filed October 19, 1988).

Comment date: December 16, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-25-000]

November 2, 1988.

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-25-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of transportation service provided to Ohio Gas Company (Ohio Gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that it currently provides up to 8,000 Mcf per day of firm transportation service to Ohio Gas. Panhandle asserts that Ohio Gas has notified Panhandle that it no longer requires this transportation service from Panhandle. Panhandle also states that there would be no abandonment of facilities, only the firm transportation

service is being discontinued as requested by Ohio Gas. Panhandle submits that it has been advised by Ohio Gas that the underlying gas purchase agreement and upstream transportation agreement would remain in place for continued use.

Comment date: November 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89-10-000]

November 2, 1988.

Take notice that on October 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-10-000 a request as supplemented October 19, 1988, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to make a direct interruptible sale of natural gas to Calibogue Kansas Corporation (Calibogue) in Jefferson County, Kansas, for use in lease operations, under Williams' blanket certificate issued in Docket No. CP82-479-000 and CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that pursuant to an agreement between it and Calibogue dated June 18, 1987, Williams has agreed to provide Calibogue up to 3,000 Mcf of natural gas per month, at no cost, for use in oil lease operations in Williams' McLouth storage field located in Jefferson County, Kansas. The agreement further provides that in the event Calibogue's usage exceeds 3,000 Mcf of natural gas per month, Williams would sell additional volumes to Calibogue at a rate equivalent to Williams' currently effective F-2 excess sales rate. Calibogue now desires to purchase volumes of natural gas in excess of the 3,000 Mcf per month limit.

Williams further states that the total volumes delivered would not exceed 250 Mcf per day and that it anticipates sales volumes would not exceed 200 Mcf per day. Williams also states that total anual volumes are anticipated to be 36,500 Mcf.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP89-83-000]

November 2, 1988.

Take notice that on October 21, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-83-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end-users, under the blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N proposes to construct and operate four sales taps. K N states that the taps would be located in Pawnee County and Wallace County, Kansas and in Gosper County and York County, Nebraska. K N further states that the end use of the gas delivered at each of the four taps would be irrigation. K N indicates that the estimated cost of the taps to be constructed in Pawnee County and Gosper County is $850 each, and that each tap to be constructed in Wallace County and York County would cost approximately $1150. [1]

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89-76-000]

November 2, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP89-76-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation on behalf of Pennzoil Gas Marketing Company (Pennzoil), a marketer, under Southern's blanket certificate issued in Docket Nos. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a service agreement dated July 26, 1988, Southern states that it would perform the transportation service under its Rate Schedule IT. It is stated that the service agreement is for a primary terms of one month with successive one month terms thereafter, unless cancelled by either party. Southern expects to transport 1,500 MMBtu of gas on a peak day, 900 MMBtu of gas on an average day, and 328,500 MMBtu of gas on an annual basis. Southern further states that it would receive the gas at various receipt points in Mississippi and redeliver it to various delivery points in Mississippi. Southern asserts that no new facilities are required to implement the proposed service. Finally, Southern advises that it commenced transportation of natural gas for Pennzoil on August 3, 1988, as reported in Docket No. ST88-5517, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-98-000]

November 2, 1988.

Take notice that on October 28, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-98-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Mountain Iron & Supply Company (Mountain Iron), a marketer and agent for DeKalb-Pfizer Genetics-Tuscola (DeKalb), an end-user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated August 26, 1988, it proposes to transport up to 500 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Mountain Iron from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in various counties in the state of Illinois.

Panhandle advises that service under § 284.223(a) commenced on September 1, 1988, as reported in Docket No. ST88-5667. Panhandle further advises that it would transport 300 dt on an average day and 7,500 dt annually.

[1] K N states that customers reimburse a portion of the construction costs to K N through imposition of a connection charge which varies by state. This charge is $250 in Kansas and $400 in Nebraska.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Lone Star Gas Company

[Docket No. CP89–91–000]

November 2, 1988.

Take notice that on October 27, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP89–91–000 a request pursuant to its blanket certificate in Docket No. CP83–59–000 pursuant to section 7(b) of the Natural Gas Act and §§ 157.205, 157.211, 157.212 and 157.216 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) for authorization to abandon a sales tap, lateral line and appurtenant facilities, and to continue service to the existing customer with a service tap from another existing line, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following customer:

Customer	Location	Line
W.T. Waggoner Ranch.	Wichita County, Texas.	A–32

Lone Star further states that it has not obtained a letter of consent from the W.T. Waggoner Ranch, since it proposes to continue rendering service to this customer from a line tap off of Line A. No other customers, except the W.T. Waggoner Ranch, are served off of Line A–32.

Lone Star asserts that sales to the W.T. Waggoner Ranch will continue to be made at appropriate rate.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–68–000]

November 2, 1988.

Take notice that on October 14, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–68–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Arco Oil and Gas Company (Shipper), under the blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 25,000 dt., on an average day will be 25,000 dt., and on an annual basis will be 9,125,000 dt. Transco also states it will receive the gas at High Island Block 111 (110,138), offshore Texas and deliver the gas at Johnson Bayou Barracuda, Cameron Parish, Louisiana. Transco further states it commenced this service September 1, 1988 as reported in Docket No. ST89–24.

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–95–000]

November 3, 1988.

Take notice that on October 28, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–95–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated September 30, 1988, it proposes to transport natural gas for Citizens from a point of receipt located offshore Louisiana and redeliver the gas to a interconnect located in Rye, Westchester County, New York with Consolidated Edison of New York. Applicant also states that no construction of facilities will be required to provide this transportation service.

The Applicant further states that the maximum daily, average day and annual volumes of gas delivered would be approximately 100,000 Dekatherms, 100,000 Dekatherms and 36,500,000 Dekatherms respectively. Service under § 284.223(a) commenced October 2, 1988, as reported in Docket No. ST89–241 (filed October 19, 1988).

Comment date: December 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

Trinity Pipeline, Inc.

[Docket No. CI89–26–000]

November 3, 1988.

Take notice that on October 24, 1988, Trinity Pipeline, Inc. (Trinity) of 17101 Preston Road, Suite 240, Lock Box 122, Dallas, Texas 75248, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: December 19, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protests 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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25817 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM88-5-20-002, TQ89-1-20-000, TM89-2-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 31, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective August 1, 1988

Substitute Twentieth Revised Sheet No. 205

Substitute Tenth Revised Sheet No. 214

Proposed to be effective November 1, 1988

Twenty-third Revised Sheet No. 205
Thirteenth Revised Sheet No. 214

Proposed to be effective December 1, 1988

Twenty-ninth Revised Sheet No. 201

Algonquin states that pursuant to Section 7 of Rate Schedule F-4 and Section 9 of Rate Schedule SS-III, it is filing Substitute Twentieth Revised Sheet No. 205 and Substitute Tenth Revised Sheet No. 214, respectively, to track the revised rates filed for by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's filing dated October 18, 1988 in Docket No. TQ88-2-17 *et. al.* The proposed effective date for Substitute Twentieth Revised Sheet No. 205 and Substitute Tenth Revised Sheet No. 214 is August 1, 1988.

Algonquin states that pursuant to Section 17 of the General Terms and Conditions, and Section 7 of Rate Schedule F-4 and Section 9 of Rate Schedule SS-III, it is filing Twenty-ninth Revised Sheet No. 201 and Twenty-third Revised Sheet No. 205 and Thirteenth Revised Sheet No. 214, respectively, to track changes by its supplier, Texas Eastern in the rates of the underlying services as set forth in Texas Eastern's compliance filing of October 26, 1988 in Docket Nos. RP85-177 *et. al.*, CP88-136 *et. al.* and RP88-67 *et. al.* The rate changes represent an increase in Algonquin's purchased gas costs of approximately $7.1 million for the effective period of Algonquin's instant Quarterly PGA filing for Rate Schedules F-1, WS, E-1-1, I-1. The rate change in Rate Schedule F-4 represents increases in the Demand component of 47.5 cents per MMBTu and 13.74 cents for MMBtu in the Commodity component. The rate change in Rate Schedule SS-III represents a decrease in the Non-FDDQ Withdrawal component of 0.1 cents per MMBtu. The proposed effective date of Twenty-ninth Revised Sheet No. 201 is December 1, 1988. The proposed effective date for Twenty-third Revised Sheet No. 205 and Thirteenth Revised Sheet No. 214 is November 1, 1988 to coincide with the proposed effective date of Texas Eastern's filing.

Algonquin notes that copies of the filing were served upon all affected parties and interested state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25803 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-1-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

November 3, 1988.

Take notice that on November 1, 1988, Algonquin Gas Transmission 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, Second Revised Volume No. 1:

Revised Substitute Sixth Revised Sheet No. 600

Revised Substitute First Revised Sheet No. 662

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. All such motions or protests must be filed by 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. 88-25804 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie") on October 31, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1988:

Eleventh Revised Sheet No. 47
Eleventh Revised Sheet No. 48

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to adjust its rates effective November 1, 1988, to reflect a $.1452 per Dth increase in the applicable commodity components of its LVWS and CDS Rate Schedules, a $.1530 per Dth increase in the D-1 component, and a $.0016 per Dth increase in the D-2 components of those Rate Schedules. The proposed increase in the LVIS Rate Schedule is $.1582 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

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 §§ 385.211 and 385.214 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 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 proceedings. 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. 88-25805 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-7-000]

Columbia Gas Transmission Corp.; Notice of Petition for Conditional Waiver of Commission Regulation

November 3, 1988.

Take notice that on October 25, 1988, Columbia Gas Transmission Corporation (Columbia) filed a petition for a conditional waiver of the sunset provision set forth at § 2.104(c)(1) of the Commission's regulations (18 CFR 2.104(c)(1).

Columbia states that its PGA filings have included and continue to include prices it pays for gas under certain Appalachian contracts containing price provisions which were renegotiated during the period 1983-85 to allow for market-sensitive pricing. Columbia alleges that the prices it pays under these amended contracts is its current "offering price" (the price it pays for new Appalachian supplies) as adjusted annually, plus a differential of 25 cents, 50 cents or 75 cents per MMBtu, depending upon the contract language (Price Differential). Certain intervenors and Staff have argued in Columbia's ongoing PGA proceedings in Docket Nos. TA87-4-21, *et al.*, that the Price Differential is a payment by Columbia for the renegotiation of its contractual price provisions, is thus not a gas cost and should not be recovered through the PGA, but rather through a Section 4(e) filing. Columbia states that the costs related to the Price Differential do not involve contract disputes with producers which need to be resolved before December 31, 1988 but rather relate to contracts which have been renegotiated. Therefore, Columbia alleges, the underlying rationale for the need for a sunset deadline is absent.

Columbia states that a conditional waiver of the December 31, 1988 sunset deadline is appropriate in the interests of administrative and judicial economy and fairness in this instance. Columbia states that it should not be required to incur the time and expense of preparing a Section 4(e) rate filing to recover costs which Commission precedent clearly supports as gas costs in order to comply with the Commission's December 31, 1988 sunset deadline. Columbia states that its filing would necessarily be made contingent upon the outcome of its PGA proceeding.

Columbia states that since the characterization of the costs related to the Price Differential is in litigation in Columbia's PGA proceedings, it should be given the right to await the natural end of such litigation and have the opportunity to elect to recover such Price Differential cost through an Order No. 500 filing if they are ultimately found to be non-gas costs. Columbia states that the Commission grant the requested waiver of the December 31, 1988 sunset provision to give Columbia the opportunity, within 60 days after final Commission action in the ongoing PGA proceedings, to recover the Price Differential costs through an Order No. 500 filing in the event the Commission rules that such costs are non-gas costs.

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 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. 88-25806 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-24-000]

Equitrans, Inc., Proposed Change in FERC Gas Tariff

November 4, 1988.

Take notice that Equitrans, Inc. (Equitrans) on October 31, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1988.

Fifth Revised Sheet No. 10
Fifth Revised Sheet No. 14

Equitrans states that the filing is made pursuant to §§ 154.308 and 154.304 of the Commission's Regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 19, of its General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Equitrans states that current purchase gas adjustment to Rate Schedule PLS is an increase of $.1748 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $2.3251 per dth and a Total Commodity Charge of $2.7839 per dth.

Equitrans states the current adjustment to D(1) Purchased Gas Costs for Rate Schedule PLS reflects a decrease of $.0647 per dth for an overall D(1) demand costs of $2.9559 per dth.

Equitrans states the current adjustment to D(2) Purchased Gas Costs for Rate Schedule PLS reflects an increase of $.0010 per dth for an overall D(2) demand costs of $.0721 per dth.

Equitrans states the current purchase gas adjustment to Rate Schedule GS–1 is a decrease of $.2403 per dth. This change results in a current estimated average cost of gas in this filing of $2.5812 per dth and a Total Commodity Charge of $2.7839 per dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket CP86–676–000.

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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or 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. All motions to intervene or protests should be filed on or before November 14, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25807 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–259–002]

Northern Natural Gas Co.; Filing

November 4, 1988.

Take notice that on October 27, 1988, Northern Natural Gas Company (Northern) filed the following tariff sheets to be a part of its FERC Gas Tariff:

Third Revised Volume No. 1

Substitute Sixty-First Revised Sheet No. 4b

Substitute Twenty-Ninth Revised Sheet No. 4b.1

Original Volume No. 2

Substitute Sixty-Eighth Revised Sheet No. 1c

Northern states that this filing contains a statement of the Minimum Bill Deficient Rate on Sheet Nos. 4b and 1c which was inadvertently omitted from its general rate proceeding in Docket No. RP88–259–000. Northern states that the Minimum Bill Deficient Rate on Sheet No. 4b is $.3232 and is derived from the fixed commodity cost for sales shown on Schedule K–1, Page 4, Column (f), Line 75 of RP88–259. In addition, the Minimum Bill Deficient Rate on Sheet No. 1c is $.3706 and is derived from Schedule K–1, Page 7. The demand and fixed commodity costs shown on Lines 13 and 14 respectively are divided by the annual sales volumes shown on Line 10. Northern requests any waivers that may be necessary to correct this inadvertent omission.

In addition, Northern states that this filing reestablishes the PGA costs as reflected in the Flexible PGA (TF89–1–59) filed September 30, 1988 to be effective October 1, 1988.

Northern states that copies of this filing have been mailed to each of its gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). 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. 88–25809 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–28–000]

Panhandle Eastern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 31, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Ninth Revised Sheet No. 3-A

Forty-Sixth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is December 1, 1988.

Panhandle states that these revised tariff sheets filed herewith reflect a commodity rate decrease of (5.32¢) per Dt in the projected purchased gas cost component.

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D_1 and D_2 demand rates: (1) an increase of $1.01 for D_1 and (2) a decrease of (11.74¢) for D_2 to reflect the current rate changes in § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline supplier demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective December 1, 1988.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25811 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–9–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 28, 1988, tendered for filing the following proposed changes to is FERC Gas Tariff, Original Volume No. 1: Original Sheet No. 3–C.10, Original Sheet No. 3–C.11, Original Sheet No. 3–C.12, First Revised Sheet No. 43–12.

The subject tariff sheets bear an issue date of October 28, 1988, and a proposed effective date of November 28, 1988.

Panhandle states that these tariff sheets reflect fixed demand surcharges

to effectuate the recovery of 50% of approximately $128 million for take-or-pay buyout and buydowns of gas purchase arrangements with producers suppliers. This amount reflects take-or-pay settlement costs incurred by Panhandle and for which Panhandle has either a written or verbal obligation to pay, such obligations being entered into during the period from August 30, 1988 to October 28, 1988.

Panhandle states this fixed take-or-pay charge will be billed in addition to Panhandle's currently effective rates including the fixed take-or-pay charges approved subject to refund and conditions, in Docket No. RP88–241–000 which recover 50% of Panhandle's take-or-pay costs incurred prior to August 29, 1988.

Panhandle proposes in this filing to allocate the additional take-or-pay costs to its jurisdictional sales customers, in accordance with the same methodology approved, subject to refund and conditions, by the Commission in its September 28, 1988 Order in Docket No. RP88–241–000.

Panhandle states the additional fixed demand surcharges are allocated among the firm sales customers on the basis of a comparison of their firm purchases during the deficiency period years 1982 through 1987, with their individual firm purchases in base period year 1981.

Panhandle states that in accordance with Order No. 500 it is agreeing in this filing to absorb an amount equal to the costs Panhandle is permitted to recover through fixed demand surcharges. Panhandle reserves the right, however, in the event any customer elects to challenge the prudence of the take-or-pay settlement and contract reformation costs which Panhandle seeks to recover by this filing, to bill to that party, by means of a fixed demand surcharge, its *full* pro rata share of the subject costs found to be prudently incurred (in addition to such further costs as the Commission may permit). In accordance with the Commission's rulings in *United Gas Pipe Line Co.*, 42 FERC Paragraph 61,197 at pp. 61,685–86 (1988), Panhandle also reserves the right to recover through demand surcharges, the full pro rata share of the subject costs found to be recoverable from customers under the jurisdiction of a state agency that elects to contest the prudence of the subject costs. To facilitate the disposition of this matter, Panhandle requests the Commission to require that any party choosing to contest the prudence of the subject costs be provided only a limited amount of time to make such an election and that such election be deemed to be irrevocable except as Panhandle may otherwise consent.

Panhandle requests that the Commission waive the filing requirements of § 154.63 of the Commission's regulations and the provisions of § 154.66 to accept, without delay, Panhandle's filing herein and the material incorporated herein by reference, as the cost and revenue support for this filing, permitting the same to become effective on November 28, 1988.

Panhandle asks the Commission to grant all necessary waivers so as to place the instant tariff sheets and attendant rates into effect on November 28, 1988. Since the instant filing effectuates the cost sharing policy of Order No. 500, Panhandle states good cause exists to place such tariff sheets into effect on an expeditious basis.

Copies of the filing were served upon Panhandle's jurisdictional customers, interested state commissions and the parties in Docket Nos. RP87–103 and RP88–262.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25810 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–8–000]

Pacific Interstate Transmission Co.; Change in Rate

November 3, 1988.

Take notice that on October 28, 1988, Pacific Interstate Transmission Company ("Pacific Interstate") tendered for filing a Notice of a Change in Rates for natural gas service rendered to its sole jurisdictional customer, Southern California Gas Company, pursuant to Rate Schedule CQS–1, FERC Gas Tariff Original Volume No. 1. To implement this notice of change, Pacific Interstate tendered for filing and acceptance Third Revised Tariff Sheet No. 9 superseding Second Revised Tariff Sheet No. 9, First Revised Sheets Nos. 6 and 7 superseding Original Sheets Nos. 6 and 7.

Pacific Interstate states that based upon the test period cost of service, Pacific Interstate projects a decrease in annual revenue requirements and therefore files a rate decrease of approximately $5 million per annum. Pacific Interstate states that the reduction is principally due to a decline in rate base, a lengthening of its depreciation life, and a requested decrease in the cost of long-term debt. Pacific Interstate further notes that the filing reflects the abandonment of its Southwest Division sales authority and PGA as approved by the Commission (43 FERC 61,222; May 5, 1988). The only area in which rates increase, as stated by Pacific Interstate, is charges associated with transportation of gas by others. Pacific Interstate does not propose any other change in its rates.

Pacific Interstate has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective November 1, 1988.

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 §§ 385.214 and 385.211 of this chapter. 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. 88–25818 Filed 11–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2144–007]

City of Seattle, Washington; Petition for Declaratory Order

November 3, 1988.

Public notice is given that the Public Utility District No. 1 of Pend Oreille County, Washington (the PUD) filed a petition for declaratory order with the Federal Eenrgy Regulatory Commission on May 5, 1988. The petition seeks a determination of the correct interpretation of Article 49 of the license for the Boundary Project No. 2144, on the Pend Oreilla river in Northeastern Washington. Article 49 provides for the City of Seattle, the project licensee, to assign "at cost," upon proper notice, 48

megawatts (MW) of Boundary Project power to the PUD. The City of Seattle filed on June 6, 1988, a response to the PUD's petition in which it takes issue with certain aspects of the PUD's filing.

The PUD's petition asks that the Commission determine the meaning of Article 49's provision that the power available to the PUD should be delivered "at cost." The PUD identifies three specific issues as to cost which should be resoved: (1) Whether Seattle's revenues from non-firm sales should be credited against the project's total embedded costs; (2) whether depreciation costs on recent additions made by Seattle to the project should be charged over the remaining useful life of the improvements or over the remaining term of the initial license for the project; and (3) what costs, if any, would be incurred by Seattle and chargeable to the PUD for delivery at the PUD's "system load factor."

Seattle's response maintains that the genesis of Article 49 was a proposal which Seattle made during the licensing proceedings in the 1950's to make the 48 MW of Boundary project power available to the PUD "in consideration of" the PUD's withdrawal of its competing application for the project, and its sale to Seattle at cost of properties it owned within the proposed Boundary Project's boundaries. Seattle states that the PUD did not accept this proposal, however, and continued to oppose Seattle's application. Consequently, Seattle asserts, "the Article 49 reservation of power to [the PUD] was made without any consideration.

Seattle's response further maintains that the cost of providing power under Article 49 "is the cost to Seattle of alternative power" which it will have to acquire to replace the power provided to the PUD.

Both the PUD's and Seattle's filing request that the Commission order a hearing to determine the cost, terms, conditions and availability, if any, of power for the PUD.

The PUD subsequently filed on September 19, 1988, a motion for expedited consideration of its petition. Seattle filed a response to that motion on October 20, 1988, which asserts that the PUD is not entitled to project power during the July1, 1988, through June 30, 1989 operating year, because the PUD has "firm surplus" energy in an amount exceeding the PUD's requested transfer from the project. This filing also argues that any surplus sales the PUD makes outside Pend Oreille County will lower the amount of any valid claim the PUD may have for a transfer of power form the project under Article 49.

Seattle's October 20 response adds the assertion that the issue of Pend Oreille's claim to power under Article 49 stems from the construction of a large paper plant and fiber mill at Usk, Washington, owned by the Ponderway Newsprint Company. Seattle claims that this mill represents a new large single load in the Pacific Northwest region of approximately 60 average MW, allegedly three times the average load of all the PUD's present customers combined. Seattle states that this load will not actually be served by the PUD, but by the Bonneville Power Administration. Seattle argues that the supply of power to the mill by Bonneville brings into question the PUD's entitlement to any power transfer from Seattle's Boundary Project under a claim that the PUD will be supplying power to the newsprint company.

Anyone may file comments, protests, or a motion to intervene in accordance with the requirements of the Commission's Procedural Rules 211 or 214, 18 CFR 385.211 or 385.214 (1984). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. All comments, protests or motions to intervene must be filed with the commission or before November 30, 1988. Any filing must bear in all capital letters the title "COMMENTS," "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Docket No. of this notice. Send the filings to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426. A copy of any filing must also be served on the PUD and Seattle. The petition for declaratory order and subsequent filings referred to herein are available in the Commission's public files. Copies of their respective filings may also be obtained from the PUD and Seattle.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25826 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-191-003]

Tennessee Gas Pipeline Co.; Notice of Filing

November 4, 1988.

Take notice that on October 28, 1988, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Original Sheet Nos. 245A, 245C and 245D to Second Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that the purpose of the filing is to comply with Ordering Paragraph (B) of the Commission's September 28, 1988 Order in this proceeding. The revised tariff sheets reflect (1) elimination of language relating to the suspension of the December 31, 1988 sunset date for recovery of costs associated with gas contracts in litigation, (2) an October 28, 1988 deadline for customers to notify Tennessee of extended amortization elections and (3) clarification of language relating to lump sum payment of amounts outstanding at the end of the amortization period elected by a customer.

The tariff sheets are proposed to be effective July 1, 1988.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 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. 88-25812 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-8-000]

TransCanada PipeLines Limited v. Michigan Consolidated Gas Company-Utility Division; Notice of Complaint

November 1, 1988.

Take notice that on October 3, 1988, TransCanada PipeLines Limited (TransCanada), P.O. Box 54, Commerce Court West, Toronto, Ontario, Canada M5L 1C2, filed in Docket No. CP89-8-000 a complaint against Michigan Consolidated Gas Company-Utility Division (MichCon) pursuant to Rule 206, 18 CFR 385.206. MichCon, in Docket Nos. CP88-464-000 and CP88-509-000, filed applications for authority for the siting, construction, and operation of a pipeline at the Canadian border in order to import and export natural gas.

MichCon proposes to construct and operate a pipeline under the St. Clair River at the international border in order to facilitate the transportation and exchange of gas between MichCon and Union Gas Limited, a local distribution company in Ontario, Canada. Pursuant to the contractual agreements of the parties, MichCon would transport gas which Union Gas would export and import between the United States and Canada. The project consists of approximatley three miles of 24-inch pipeline for the purpose of transporting natural gas between a proposed gas pipeline in Ontario, Canada, and MichCon's Belle River Mills station in St. Clair County, Michigan. The maximum daily capacity of the proposed pipeline is 200 Mcf.

TransCanada's complaint alleges that, contrary to the assertions contained in MichCon's applications, any subsequent interstate transportation of natural gas imported through their pipeline is not exempt from the Commission's jurisdiction under section 7 of the Natural Gas Act by virtue of MichCon's transportation authority under section 311 of the Natural Gas Policy Act of 1978, that construction and operation of the proposed pipeline constitutes transactions in interstate commerce subject to the Commission's section 7 jurisdiction, and that MichCon holds no transportation authorization pursuant to section 311. TransCanada requests that the Commission enjoin MichCon from proceeding with construction of the proposed pipeline until such time as MichCon receives Commission authorization pursuant to section 7 of the Natural Gas Act.

Any person desiring to be heard or make any protest with reference to said filing should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such petitions should be filed within 30 days following publication of this notice in the Federal Register. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection. TransCanada has served a copy of the complaint on Mich-Con. Respondent's answer to the complaint is also due on or before 30 days following Federal Register publication.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25816 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-11-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 4, 1988.

Take notice that Trunkline Gas Company (Trunkline) on October 28, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 3-A.7
Original Sheet No. 3-A.8
Third Revised Sheet No. 21-P

The subject tariff sheets bear an issue date of October 28, 1988, and a proposed effective date of November 28, 1988.

Trunkline states these tariff sheets reflect fixed demand surcharges to effectuate the recovery of 50% of approximately $27 million for take-or-pay buyout and buydowns of gas purchase arrangements with producers suppliers. This amount reflects take-or-pay settlement costs incurred by Trunkline and for which Trunkline has either a written or verbal obligation to pay, such obligations being entered into during the period from August 30, 1988 to October 28, 1988.

Trunkline states this fixed take-or-pay charge will be billed in addition to Trunkline's currently effective rates, including the fixed take-or-pay charges approved subject to refund and conditions, in Docket No. RP88-239-000 which recover 50% of Trunkline's take-or-pay costs incurred prior to August 29, 1988.

Trunkline proposes in this filing to allocate the additional take-or-pay costs to its jurisdictional sales customers, including Mississippi River Transmission Corporation, in accordance with the same methodology approved, subject to refund and conditions, by the Commission in its September 28, 1988 Order in Docket No. RP88-239-000.

Trunkline states the additional fixed demand surcharges are allocated among the firm sales customers on the basis of a comparison of their firm purchases during the deficiency period years 1982 through 1987, with their individual firm purchases in base period year 1981.

Trunkline states that in accordance with Order No. 500 it is agreeing in this filing to absorb an amount equal to the costs Trunkline is permitted to recover through fixed demand surcharges. Trunkline reserves the right, however, in the event any customer elects to challenge the prudence of the take-or-pay settlement and contract reformation costs which Trunkline seeks to recover by this filing, to bill to that party, by means of a fixed demand surcharge, its *full* pro rata share of the subject costs found to be prudently incurred (in addition to such further costs as the Commission may permit). In accordance with the Commission's rulings in *United Gas Pipe Line Co.*, 42 FERC Paragraph 61.197 at pp. 61,685-86 (1988). Trunkline also reserves the right to recover through demand surcharges, the full pro rata share of the subject costs found to be recoverable from customers under the jurisdiction of a state agency that elects to contest the prudence of the subject costs. To facilitate the disposition of this matter. Trunkline requests the Commission to require that any party choosing to contest the prudence of the subject costs be provided only a limited amount of time to make such an election and that such election be deemed to be irrevocable except as Trunkline may otherwise consent.

Trunkline requests that the Commission waive the filing requirements of § 154.63 of the Commission's Regulations and the provisions of § 154.66 to accept, without delay, Trunkline's filing herein and the material incorporated herein by reference, as the cost and revenue support for this filing, permitting the same to become effective on November 28, 1988.

Trunkline asks the Commission to grant all necessary waivers so as to place the instant tariff sheets and

attendant rates into effect on November 28, 1988. Since the instant filing effectuates the cost sharing policy of Order No. 500, Trunkline states good cause exists to place such tariff sheets into effect on an expeditious basis.

Copies of the filing were served upon Trunkline's jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Trunkline's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25813 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Trunkline Gas Company (Trunkline) on October 28, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Sixth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is December 1, 1988.

Trunkline states that this revised tariff sheet filed herewith reflects a commodity rate increase of 6.50¢ per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional rates effective December 1, 1988.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person dersiring 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25814 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-1-56-000 and TQ89-1-56-001]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

November 3, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on October 31 and November 1, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

10th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

15th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

Vitco states the changes in rates to Rate Schedule S-1, FERC Gas Tariff Original Volume No. 2 includes a decrease in purchased gas costs of $.0218 and elimination of a surcharge of $.2943 for a total decrease of $.3161 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost $.0061 and elimination of a surcharge of ($1.1241) for a total increase of $1.1302 per MMBtu.

The proposed effective date for the above filing is December 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by December 1, 1988.

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 Capitiol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1988 Protests will be considered by the Commission in determining the appropirate action to be taken, but will not serve to make protestants parties to the proceedings. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25815 Filed 11-7-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearings; Advanced Broadcast Technologies, Inc.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I

Applicant, City and State	File No.	MM Docket No.
A. Advanced Broadcast Technologies, Inc., State College, PA.	BPH-870915MC	88-474
B. Destiny Communications, Inc., State College, PA.	BPH-870915MD	.....
C. American Indian Broadcast Group, Inc., State College, PA.	BPH-870916MB	.....
D. Board of Trustees of the Pennsylvania State University, State College, PA.	BPED-870916MD	.....

Issue Heading and Applicants

1. Air Hazard—A, B, C
2. Comparative—All Applicants
3. Ultimate—All Applicants

II

Applicant, City and State	File No.	MM Docket No.
A. Image Broadcasting, Inc., Lowell, Arkansas.	BPH-871102MB	88-477
B. Douglas R. Whitman, and Pamela K. Whitman, Lowell, Arkansas.	BPH-871105MC	.....
C. War Eagle Broadcasting, Inc., Lowell, Arkansas.	BPH-871105ME	.....
D. Winco Broadcasting, Inc., Lowell, Arkansas.	BPH-871105MH	.....
E. Kenneth G. Eklund and Marsha M. Walker d/b/a Eklund-Walker Communications, Lowell, Arkansas.	BPH-871105MJ	.....
F. Florence K. Grace, Lowell, Arkansas.	BPH-871105MP	.....
G. Beaver Broadcasting, Inc., Lowell, Arkansas.	BPH-871105MM	.....
H. Jimmy Lee Jones d/b/a Jones Communications, Lowell, Arkansas.	BPH-871105MN	.....

Issue Heading and Applicants

1. City Coverage—E
2. Environmental Impact—H
3. Comparative—A–H
4. Ultimate—A–H

III

Applicant, City and State	File No.	MM Docket No.
A. Ra-ad of Trenton, Inc., Trenton, GA.	BPH-870917MD	88-479
B. Trenton Service Co., Inc., Trenton, GA.	BPH-870918MV	.....

Issue Heading and Applicant(s)

1. Comparative—A, B
2. Ultimate—A, B

III

Applicant, City and State	File No.	MM Docket No.
A. Dennis N. O'Neal, Laurel, Delaware.	BPH-870914MA	88-478
B. M Corps, Inc., Laurel, Delaware.	BPH-870914MQ	.....

Issue Heading and Applicants

1. Air Hazard—A, B
2. Comparative—A, B
3. Ultimate—A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division, Mass Media Bureau.

[FR Doc. 88–25758 Filed 11–7–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.

Title: Monthly Report of Income and Condition (Savings Banks).

Form Number: FDIC 8040/60.

OMB Number: 3064–0058.

Expiration Date of Current OMB Clearance: 1/31/89.

Frequency of Response: Monthly.

Respondents: FDIC-insured savings banks with assets of $500 million or more.

Number of Respondents: 101.

Number of Responses Per Respondent: 12.

Total Annual Responses: 1,212.

Average Number of Hours Per Response: .75.

Total Annual Burden Hours: 909.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 5550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before January 9, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval, under the Paperwork Reduction Act, to continue using form FDIC 8040/60, Report of Income and Condition—Monthly, which is submitted by large FDIC-insured savings banks (assets of $500 million or more). The monthly reports are used by the FDIC to monitor deposit flows and income-expense results for savings banks of supervisory concern. Also, the FDIC uses the data to compute avarage cost of funds indices upon which periodic income maintenance agreements are based.

Dated: November 3, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–25820 Filed 11–7–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Crown Shipping (USA) Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2932.
Name: Crown Shipping (USA) Inc.
Address: 4 Carriage Lane, Ste. 205, Charleston, SC 29407.
Date Revoked: October 22, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 3019.

Name: Michael W. Shaw dba Restricted Article Freight Forwarding.
Address: 2631 Hidden Garden, Kingwood, TX 77339.
Date Revoked: October 24, 1988.
Reason: Surrendered license voluntarily.

License Number: 3078.
Name: Seacon Express Chicago, Inc.
Address: 1107 N. Ellis Street, Bensenville, IL 60106.
Date Revoked: October 31, 1988.
Reason: Surrendered license voluntarily.

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 88-25747 Filed 11-7-88; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; H.L.M. Intertrans Corp., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

H.L.M. Intertrans Corp., 5419 NW. 74th Avenue, Miami, FL 33166. Officers: Nilo E. Villena, Sr., President; Rosa E. Villena, Vice President.

Midwest Agencies Company, 3426 S. Lenox Street, Milwaukee, WI 53207. Officer: Cynthia J. Dee, Sole Proprietor.

Transit Cargo Services, Inc., 45 John Street, New York, NY 10038. Officers: Miguel Guerrero, President; Arne Faaberg, Vice President/Stockholder.

Freight Connections International, Ltd., 935 W. 175th Street, Homewood, IL 60430. Officers: Richard Dickson, President/Director/Stockholder; Michael Kelly, Sec./Treas./Dir./Stockholder; George Trainer, Exec. Vice Pres./Dir./Stockholder; Jacqueline Guy, Vice President.

Rewico America Inc., 47 Fitzherbert Street, Bloomfield, NJ 07003. Officers: Rolf Winterberg, President/Director; Gustav Tietje, Vice President/Director; Jurgen Krafft, Treasurer/Director; Steve Higgins, Vice President/Secretary.

Dated: November 3, 1988.

By the Federal Maritime Commission.
Joseph C. Polking,
Secretary.

[FR Doc. 88-25746 Filed 11-7-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Brooke Holdings, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The lised company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brooke Holdings, Inc.*, Jewell, Kansas; to become a bank holding company by acquiring 97.93 percent of the voting shares of Citizens State Bank, Jewell, Kansas.

In connection with this application, Applicant also proposes to engage in credit insurance activities pursuant to § 225.25(b)(8)(i) and insurance activities in small towns pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. The insurance activities to be conducted in a small town will be conducted within a ten mile radius of the community of Jewell, Kansas.

Board of Governors of the Federal Reserve System, November 2, 1988.
James MacAfee,
Associate Secretary of the Board.

[FR Doc. 88-25733 Filed 11-7-88; 8:45 am]
BILLING CODE 6210-01-M

MidAmerica Bank Corp., et al., Formations of; Acquistions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 23, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33

Liberty Street, New York, New York 10045:

1. *MidAmerica Bank Corporation,* Somerville, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Mid Jersey National Bank, Somerville, New Jersey.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CommBanc Shares, Inc.,* Erlanger, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Community Bank, Erlanger, Kentucky.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Security National Corporation,* Maitland, Florida; to acquire 100 percent of the voting shares of Security National Bank of Brevard, Melbourne, Florida, a *de novo* bank.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480;

1. *Charter 95 Corporation,* Hudson, Wisconsin; to acquire 60.65 percent of the voting shares of North Branch Investment, Inc., North Branch, Minnesota, and thereby indirectly acquire 37.31 percent of the voting shares of Merchants State Bank, North Branch, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado,* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of West Vail, Vail, Colorado.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25734 Filed 11–7–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Jay Nelson

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jay Nelson,* Austin, Minnesota; to acquire an additional 12.4 percent of the voting shares of Mower Agency, Inc., Austin, Minnesota, and thereby indirectly acquire Sterling State Bank, Austin, Minnesota.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25732 Filed 11–7–88; 8:45 am]

BILLING CODE 6210–01–M

Signet Banking Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) Of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation,* Richmond, Virginia; to engage *de novo* through its subsidiary, Fortune Asset Management, Inc., Richmond, Virginia, in providing investment counselling and advice and the management of securities accounts through a joint venture with the Equimax Corporation, Richmond, Virginia, pursuant to § 225.25(b) (3) and (4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A.B.N.—Stichting,* Amsterdam, The Netherlands; to expand the activities of its subsidiary, Netherlands Trading Society East, Inc., Chicago, Illinois, in making, acquiring, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted on a national and international basis.

2. *Athens Bancorp, Inc.,* Athens, Wisconsin; to engage *de novo* by acquiring a 9 percent interest in Vigil Asset Management Group, Inc., Wausau, Wisconsin, in providing a full range of trust and fiduciary services to the general public pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25735 Filed 11–7–88; 8:45 am]

BILLING CODE 6210–01–M

Washington National Holdings, N.V.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–24796) published at page 43477 of the issue for Thursday, October 27, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Washington

National Holdings is amended to read as follows:

1. *Washington National Holdings, N.V.*, Netherlands Antilles; acquire 100 percent of the voting shares of The Washington Bank (of Maryland), Baltimore, Maryland, a *de novo* bank.

Comments on this application must be received by November 22, 1988.

Board of Governors of the Federal Reserve System, November 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25736 Filed 11-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-021-N]

Medicare Program; Part A Premium for the Uninsured Aged for 1989

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for the uninsured aged for calendar year 1989 under Medicare's hospital insurance program (Part A). The monthly Medicare Part A premium for the 12 months beginning January 1, 1989 (for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A) is $156. The Medicare statute specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 103 of Pub. L. 100-360, requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year.

Section 1818(d) of the Act, as amended by section 103 of Pub. L. 100-360, requires the Secretary to estimate the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Part A, and to estimate the average per capita cost. He must then, during September, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and promulgate the dollar amount to be applicable for premiums in the succeeding year. If the premium is not a multiple of $1.00, the premium is rounded to the nearest multiple of $1.00 (or if it is a multiple of 50 cents but not of $1.00, it is rounded to the next highest $1.00). The first premium under this new method is effective January 1989.

II. Premium Amount For 1989

Under the authority in section 1818(d)(2) of the Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1989 is $156, which is a decrease from the 1988 premium. This premium represents a decrease from previous premiums as the law now requires that the premium be based on the cost of services. Until now, the premium was, as required by statute, $33 multiplied by the ratio of the inpatient hospital deductible for the same calendar year to the deductible for 1973.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly premium for the uninsured aged for 1989 is equal to the monthly actuarial rate for 1989 rounded to the nearest multiple of $1; the monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1989 for individuals age 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determined the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are (a) establishing the present cost of services provided to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Part A enrollment and projecting enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1989 on (a) current historical data and (b) projection assumptions from the Midsession Review of the Presidents Fiscal Year 1989 Budget. It is estimated that in calendar year 1989, 29.543 million people age 65 and over will be entitled to Part A benefits (without premium payment), and that these individuals will, in 1989, incur $55.425 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $156.34, and the monthly premium is $156.

IV. Savings to Beneficiaries

The 1989 Part A premium is 33 percent lower than the $234 monthly premium amount for the 12-month period beginning January 1, 1988.

The estimated savings of this decrease to the approximately 19 thousands enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $1.5 million.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

(Section 1818(d)(2) of the Social Security Act (42 U.S.C.) 1395i-2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 29, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 4, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-25765 Filed 11-7-88; 8:45 am]

BILLING CODE 4120-01-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: Executive Committee, Sunday, December 4, 1988, 1:00 p.m.–5:00 p.m.; Full Committee, December 5–6, 1988; 9:00 a.m.–5:00 p.m., December 5, 1988; 9:00 a.m.–5:00 p.m., December 6, 1988.

PLACE: Holiday Inn–Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Regardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to progams and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for persons with mental retardation, and reviewing legislative proposals that affect persons with mental retardation.

CONTACT PERSON FOR MORE INFORMATION: Vivian B. Levin, 330 Independence Avenue, SW., Room 4723–Wilbur J. Cohen Building, Washington, DC 20201–0001, (202) 245–7634.

Date: November 2, 1988.

Vivian B. Levin,

Executive Director, PCMR.

[FR Doc. 88-25764 Filed 11-7-88; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on December 14–15, 1988 at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 9:00 a.m. to 5:00 p.m., on December 14, and 9:00 a.m. to 12:00 noon on December 15, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to a review and discussion of the report of the Human Fetal Tissue Transplantation Research Panel and the deliberations of the Panel on the scientific, ethical, and legal issues surrounding the use of human fetal tissue obtained from induced abortions in transplantation research for therapeutic purposes.

The executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-25835 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on December 1–2, 1988, from 8 a.m. to approximately 5 p.m. each day at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: November 1, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-25836 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Planning Subcommittee of the Board of Regents; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on November 21 and 22, 1988, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on November 21, and from 9:00 a.m. to adjournment on November 22. The Subcommittee will discuss the Outreach Programs of the National Library of Medicine—how the Library can fully inform health care professionals of its products and services, and how to establish a permanent user feedback mechanism. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of Subcommittee members, and substantive program information upon request.

Date: November 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-25837 Filed 11-7-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1888]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, the OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice for the Section 8 Certificate Project-Based Assistance Program

Office: Housing

Description of the Need for the Information and its Proposed Use: This program Notice establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Section 8 Certificate Program. The Notice implements a 1987 law which directs the Department to permit a PHA to attach to structures up to 15 percent of the Section 8 Assistance by the PHA under the Certificate Program.

Form Number: None

Respondents: State or Local Governments, Business or Other Non-Profit and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondnts	×	Frequency of response	×	Hours per response	=	Burden Hours
PHAs	200		1		2 hrs		400
(Properties)	(50)		(1)		(½ hr)		(25)
Total Burden							425
Owners Total Burden	100		1		10.2 hrs		1020
Estimated Hours							1,445

Total Estimated Burden Hours: 1,445

Status: New Collection

Contact: Myra Newbill, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880

Dated:

Supporting Statement for Section 8 Certificate Project-Based Assistance Notice

A. Justification

1. The Section 8 Housing Assistance Payments Program was authorized by the U.S. Housing Act of 1937 as amended by the Housing and Community Development Act of 1974 (Pub. L. 93–383) and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. Under the Section 8 Certificate Program, The Department of Housing and Urban Development (HUD) enters into an Annual Contributions Contract (ACC) with Public Housing Agencies (PHAs) to assist very low-income families who enter into leases directly with private owners of existing rental housing. Section 8(d)(2) was amended by section 148 of the HUD Act of 1987 (Pub. L. 100–242) to require HUD to permit a PHA to attach to structures up to 15 percent of the Section 8 Existing housing assistance provided by the PHA thereby creating a Section 8 Certificate Program project-based component. Section 208 of the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98–181) previously amended Section 8(d)(2) to permit the attachment of assistance to an existing structure only if the owner agrees to rehabilitate the structure other than with assistance under the 1937 Act. The program Notice requires that the term of the Housing Assistance Payments Contract for the structure not extend beyond the term of the ACC.

2. Section 8 Certificate project-based assistance is a modification of the current Section 8 Existing Housing (Certificate) Program. Neither the statute nor the Notice imposes any obligation on a PHA to implement project-based assistance. Project-based assistance will allow PHAs to tie Section 8 assistance to units where HUD and the PHA agree to such an action and the owner agrees to rehabilitate the structure other than with assistance provided under the U.S. Housing Act of 1937.

The requested information requirements (by whom and for what purpose the information is to be used) consist of the following:

Section 4.—PHA request for HUD approval to attach assistance to units. Approximately 200 PHAs will submit to the HUD Field Office the following:

—The total number of units currently reserved for the PHA's Section 8 Certificate Program and the total number of units requested for project-based subsidy;

—The number of units, by bedroom size, to be assisted and the funding source with the termination date of

ACC; and
—The estimated rehabilitation periods and termination dates for the HAP Contracts to be executed for the projected-based subsidies.

Upon HUD approval of the PHA request, the PHA will be authorized to implement a Project Based Certificate Program.

Section 12.a.(2)—Submittal of financial statements of PHAs by owners:
The Department anticipates that approximately ten owners will request special adjustments to reflect increases in actual and necessary expenses of owning and maintaining units that have resulted from substantial general increases in real property taxes, utility rates, or similar costs. The owners must clearly demonstrate that these general increases in operating costs are not adequately compensated for by the annual adjustments and submit the financial statements to support the increase. PHA will send the Owner requests to HUD. If approved by HUD, the PHA will approve rent increases for the units.

Section 16—Work write-up requirement:
Approximately 100 owners must prepare work write-ups which include specifications and plans (where necessary). The write-up describes how the specific work items are to be performed, including the minimum acceptable levels of workmanship and materials. This is necessary so the PHA and owner agree to the items to be rehabilitated.

Section 17.d.—PHA notification of families on waiting list:
In order that vacant units might be promptly occupied, the owners (100) must notify the PHAs of vacancies, 60 days before the scheduled completion of the rehabilitation. The PHAs must notify families, of appropriate size and composition, on its waiting lists that units are available.

Section 18 (a) and (b)—Owner notification of completion: The owner must notify the PHA when the rehabilitation work is completed and submit to the PHA the evidence of completion. The evidence of completion consists of the following:
—A certificate of occupancy or other official approvals;
—Owner certifies that:
—The units are completed in accordance with the Agreement requirements
—The units are in good and tenantable condition
—There are no defects or deficiencies in the work
—The units have been rehabilitated in accordance with applicable zoning, building, housing, other codes, ordinances or regulations
—Units built before 1978 are in compliance with the lead-based paint regulations
—The owner has complied with the applicable Agreement's labor standards requirements

If everything is acceptable, the PHA and Owner will execute a HAP Contract and rent subsidies will begin.

3. No consideration has been given to the use of improved information technology to reduce burden.

4. There is no duplication.

5. There is no similar information.

6. The associated burden with this new program component is the minimum needed for monitoring and implementation.

7. The information cannot be collected less frequently because it is either: (1) A one-time collection at the sole option of the PHA (request for HUD approval); (2) information submitted on occasion at the sole option of the owner (special adjustments); or (3) information necessary to ensure housing rehabilitation and occupancy by very low income families.

8. There are no special circumstances and the guidelines of 5 CFR 1320.6 are not violated.

9. There were no consultations outside of the agency.

10. No assurance of confidentially is provided, nor is it needed.

11. No sensitive questions are asked.

12. & 13. It is estimated that because of initial PHA resistance to new programs, approximately 200 PHAs will annually utilize this project-based assistance program. We also estimate that 100 owners with 1000 units in approximately 100 properties will annually participate, and that 50% (50 properties) of the properties will be occupied by eligible families prior to rehabilitation. The total annual burden hours for PHAs are 425 hours and for owners 1025 hours. The estimated cost per PHA and owner is approximately $13.00 per hour which results in the cost of PHAs at $5,525.00 annually ($28.00 per PHA) and for owners $13,260.00 annually ($133.00 per owner) for a total of $18,785.00 annually. See attached matrix for estimated burden hours.

1 4. This is a new information collection burden. See items 12 and 13 for estimates.

15. Not applicable; information will not be published for statistical use.

B. Collection of Information Employing Statistical Methods: Section B is not applicable since statistical methods are not utilized.

New requirements applicable program ref.	Discription of information collection	Form used	Nunber of respondents + number of responses per respondent	Hours per response + Total annual hours	Average cost per PHA or owner	Estimates cost annually
Section 4—PHA Application for HUD Approval to attach Assistance to units.	Total No. of units; units proposed for project—based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP Contract.	No prescribed form	200 PHAs (1 response each).	2 hrs. (400 hrs.)	$13.00 per hr. (average cost per hr. for PHA mgmt. staff).	$5,200.00.
Section 12.a.(2)—Special Rent Adjustment.	Special Adjustments—financial statements submitted by Owner to support request for rent increase.	No prescribed form	10 owners (1 response each).	2 hrs. (20 hrs.)	$13.00 per hr. (average cost per hr. for owner property mgmt. staff).	$260.00.
Section 16 Work Write-up requirement.	Work write-ups prepared by owners	No prescribed form	100 owners (1 response each).	5 hrs. (500 hrs.)	$13.00 per hr	$6,500.00.
Section 17.d. PHA notification of families on waiting list.	PHA notification of families on waiting list of vacant units.	No prescribed form	200 PHAs (50 properties) (1 response each).	½ hr. per property (25 hrs.).	$13.00 per hr	$325.00.
Sections 18 (a) and (b)-owner notification of completion.	Notification and evidence of completion submited by owner.	Owner certification and certificate of occupancy.	100 owners (1 response each).	5 hrs. (500 hrs.). PHAs, 425; Owners, 1020; Cumulative Total Hours, 1,445.	$13.00 per hr	$6,500.00. Total Annual Cost: PHAS, $5,525; Owners, $13,260; Total, $18,785.

Section 8 Certificate Program—Project-based Assistance

1. Purpose

a. This Notice establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Seciton 8 Certificate Program. The Notice implements a 1987 law which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to rehabilitate the structure *other than* with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to upgrade substandard rental housing stock, and make it available to lower income families at rents within the Sction 8 Existing Housing Fair Market Rents.

b. This notice implements Section 8(d)(2) of the United States Housing Act of 1937 as amended by section 148 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988).

Section 8(d)(2) was further amended by section 1005 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. _____, approved _____)).

The 1988 McKinney amendments permit attachment of assistance to a newly constructed structure (Section 1005(b)). This amendment is not implemented by this notice. The Department intends to implement this provision in a regulation to take effect within 90 days after enactment of the 1988 McKinney amendments.

c. Section 8(d)(2)(A) provides as follows:

> Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this Act and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met.

d. HUD does not provide any separate funding expressly for project-based assistance. Funding for project-based assistance is contract authority under the ACC for the PHA's entire Section 8 Certificate Program.

e. The notice contains new provisions needed to implement project-based assistance. However, the bulk of requirements for project-based assistance under this notice are derived from existing HUD regulations: for the Section 8 Certificate Program (Subparts A and B of 24 CFR Part 882), for the Section 8 Moderate Rehabilitation Program (Subparts D and E of Part 882), and concerning termination of tenancy in project-based assisted housing (Part 247).

To avoid unnecessarily repeating provisions common to both the "finders-keepers" Certificate Program and for project-based assistance, whenever practicable this Notice incorporates by cross-reference pertinent provisions in Part 882, Subparts A and B. Certain provisions in the Section 8 Moderate Rehabilitation Program rules (Subparts D and E of Part 882) are also incorporated by cross-reference.

In general, the principal modifications to Certificate Program requirements which are needed to provide project-based assistance fall within the following areas: Policies needed to determine the 15-percent limit under which the PHA must be permitted to attach assistance to units; policies implementing the statutory rehabilitation requirement; and inapplicability of those Section 8 Certificate Program policies that are unique to a "finders-keepers" program and, therefore, not pertinent to project-based assistance.

f. This Notice states the conditions under which a PHA may attach assistance to units. This Notice applies only to assistance provided by HUD under the Annual Contributions Contract for the PHA's Section 8 Certificate Program. Under this Notice, the PHA may execute a HAP Contract with an Owner in which the PHA agrees to make assistance payments to the Owner on behalf of eligible Families leasing one or more units specified in the Contract, if the Owner agrees to rehabilitate the structure other than with assistance under the United States Housing Act of 1937. The units to be assisted are selected by the PHA. Attaching assistance to units means that the HAP Contract for a unit is not limited to assistance on behalf of a specific Family (as in the Certificate Program). During the term of the HAP Contract, the PHA must pay a housing assistance payment to the Owner for a unit under lease by a Family in accordance with the Contract. If an assisted Family moves out of the unit, the HAP Contract continues and the assistance payments are paid on behalf of the next eligible Family which leases the unit. The Family that moves from the unit has no right to continued assistance under the Certificate Program or otherwise.

g. This Notice refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under 24 CFR Part 882, Subparts A, B, C, and F, and also by the Housing Voucher Program (24 CFR Part 887). With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted Family. If the Family moves out of a unit, the assistance contract terminates. The Family may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction.

h. Except as otherwise expressly modified or excluded by this Notice, all provisions of Subparts A and B of Part 882 apply to project-based assistance under this Notice.

i. The following sections in Subparts A and B of Part 882, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this Notice: Section 882.103, *"Finders-Keepers" policy*; § 882.208, *Activities to encourage participation by Owners and others*; and § 882.209(m), *Continued participation when Participant Family moves*. Other sections in this Notice identify other tenant-based provisions of Subparts A and B that do not apply to project-based assistance under this Notice.

j. This notice is not applicable to the Housing Voucher Program.

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3. Additional Definitions

The following definitions apply to assistance subject to this Notice, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract (Agreement). As defined in § 882.402.

15-Percent Limit. Fifteen percent of the total of the number of units reserved for a PHA's Section 8 Certificte Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 (and amendments of that funding authority) constitutes a single pre-Federal fiscal year 1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

4. PHA Application for HUD Approval to Attach Assistance to Units

a. *Requirements.* A PHA may attach assistance to units in accordance with this Notice if:

(1) The number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit. (There will be no waivers under this Notice of this limitation. The only exceptions to this policy will be made for two specific projects as required pursuant to the 1988 McKinney Act Amendments.)

(2) The unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source. (PHAs may request unit size redistributions in accordance with Handbook 7420.3 REV, paragraph 6–3, if necessary.)

(3) The rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

b. *PHA Application.* Before entering into any Agreements for project-based assistance, the PHA must apply to the HUD Field Office for approval to attach the assistance. The PHA application need not specify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently reserved for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated rehabilitation periods and termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

5. HUD Approval of PHA Application to Attach Assistance to Units

a. *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under section 4.b only to determine whether the requirements of section 4.a are satisfied.

b. *Notice to PHA.* (1) If the requirements of section 4.a are satisfied, the Field Office shall approve the PHA application.

(2) The Field Office shall notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under section 4.b (date of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the application is approved, the Field Office shall notify the PHA that the PHA may proceed with execution of Agreements for project-based assistance. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of section 4.a are not satisfied, the Field Office shall not approve the PHA application. The Field Office shall notify the PHA by letter of the reasons for disapproval.

6. Annual Contributions Contract; Schedule of Leasing

Section 882.206, *Annual Contributions Contract; schedule of leasing,* applies. With respect to units assisted under this Notice the Field Office may authorize the extension of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the rehabilitation of the units.

7. Housing Quality Standards

Section 882.404(b), *Site and neighborhood-performance requirements,* applies, in addition to the Housing Quality Standards in § 882.109.

8. Eligible and Ineligible Properties; Rehabilitation Requirement

a. Section 882.110, *Types of housing,* does not apply. Existing structures of various types may be appropriate for attaching assistance to the units under this Notice, including single-family housing and multifamily structures. To be an eligible property, the property must require rehabilitation involving a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure. (Work which qualifies as a major building system or component is defined in Section 2.a of Appendix 34 to Handbook 7420.3 REV.)

b. A PHA may not attach assistance under this Notice to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity substantially controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, or nursing services;

(4) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(5) Housing located in the Coastal Barriers Resources System designated under the Coastal Barriers Resources Act of 1982; or

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(i) The community in which the area is situated is participating in the National Food Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or

(ii) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

c. A PHA may attach assistance under this Notice to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based assistance, in whole or in part, and need not review each building on a case-by-case basis.

d. A PHA may attach assistance to units under this Notice for use as single room occupancy (SRO) housing only if:

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

e. Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this Notice.

f. For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this Notice is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this Notice).

g. In no event may any occupant of a unit with project-based assistance under this Notice receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

9. Relocation

Section 882.406 applies except that relocation costs incurred by the owner are not eligible costs for inclusion in the Contract Rents. It is noted, however, that these requirements may be affected by the Uniform Relocation Act Amendments of 1978 (Pub. L. 100–17, Title IV, 101 Stat. 132, 246 (1987). The amendments will become effective on the effective date provided in regulations to be published by the Department of Transportation, but not later than April 2, 1989. The Department of Transportation published a proposed rule on July 21, 1988. 53 FR 27598.

10. Other Federal Requirements

a. Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

b. Activities under this Notice are subject to HUD environmental regulations at 24 CFR Part 50 (Attachment A to this Notice). PHAs shall assist HUD in ensuring compliance with Part 50 requirements as follows:

(1) A PHA may authorize rehabilitation of a project in connection with project-based assistance approved by HUD under section 5 without further HUD approval only if the PHA documents in its file why the rehabilitation activity will not:

(a) Exceed the limits in § 50.20(a) or (c) of this title for categorical exclusion from the NEPA requirements of 24 CFR Part 50. However, the PHA must notify HUD if it has reason to believe that notwithstanding inclusion in these categorical exclusion limits, the project might have a significant environmental effect because of extraordinary circumstances; in that case, HUD shall review the project and the PHA must await approval to proceed under paragraph b.(2) of this section;

(b) Based on information from the State Historic Preservation Officer, involve alterations to a property that is listed on the National Register of Historic Places; is located in an historic district or is immediately adjacent to a property that is listed on the Register; or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register. A PHA is not required to contract the State Historic Preservation Officer if it documents in its file:

(1) For any property that involves only interior rehabilitation, that the property is not on the National Register of Historic Places and is not 50 years old or older; or

(2) For any property that involves exterior rehabilitation, that the property and all immediately adjacent properties are not on the National Register of Historic Places and are not 50 years old or older;

(c) Take place in any 100-year floodplain designated by map by the Federal Emergency Management Agency; or

(d) Conflict with HUD environmental standards in 24 CFR Part 51 (see Attachment B) or with the State's Coastal Zone Management plan.

(2) If further HUD approval is required under paragraph b(1) of this section, a PHA may authorize rehabilitation of a project in connection with project-based assistance only if:

(a) The PHA requests HUD to perform an environmental review of the project under Part 50, including the applicable related laws and authorities under § 50.4, HUD completes the environmental review required by Part 50, and HUD notifies the PHA that it may proceed; or

(b) (1) The PHA informs HUD that an environmental review of the area in which the proposed rehabilitation is to be located:

(A) Was previously completed for the purposes of another HUD Program under 24 CFR Part 50 or 58; and

(B) Addressed properties, activities, and effects comparable to those proposed for assistance under this Notice;

(2) HUD finds that the prior review applies to the proposed activities; and

(3) HUD notifies the PHA that it may proceed.

c. The PHA and Owner must agree to comply with the requirements of the following, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR Part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

11. Initial Contract Rents

Section 882.106, *Contract Rents*, does not apply.

a. *Fair Market Rent and Agreement limitation.* (1) The initial Contract Rent plus any applicable Utility Allowance (Gross Rent) for any unit approved under this Notice shall not exceed the Section 8 Existing Housing Fair Market Rent applicable to the unit on the date the Agreement is executed, except as provided in this paragraph a. (See section 16.c, *Contract Rents in Agreement.*)

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph a.(2) and under paragraph (a)(2) of § 882.106, Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in the maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the bais of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Authorization under this paragraph a(4) shall be based upon substantially the same criteria as under paragraph a(3) of this section, except for the last sentence of that paragraph.

b. *Rent reasonableness limitation.* (1) Because the Fair Market Rents are established for a geographic area, within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit.

(2) The PHA shall certify for each unit it approves for project-based assistance under this Notice that the initial Contract Rent for the rehabilitated unit is:

(a) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(b) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(3) For a rent-controlled unit, comparable units shall be those which are rent-controlled; for a unit which is not subject to rent control, comparable units shall be those which are not rent-controlled.

c. *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(d) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4-bedrooms.

(2) A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

e. *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for O-bedroom units under paragraphs a(3) or a(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing O-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e. 90 percent) of the O-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

f. *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

12. Contract Rent Adjustments

a. Contract Rents will be adjusted as provided in paragraphs a(1) and a(2) of this section upon request to the PHA by the Owner. However, the unit must be in decent, safe, and sanitary condition, and the Owner must otherwise be in compliance with the terms of the Leases with Families and with the Contract. Subject to section 11.b (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (a) Annual adjustments as of any anniversary date shall be determined by applying the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the **Federal Register** to the Contract Rent.

(b) Contract Rents may be adjusted upward or downward, as may be

appropriate. However, in no case may the adjusted Contract Rent be less than the Contract Rent on the effective date of the Contract (subject to post-audit and change of Contract Rent in accordance with HUD requirements, including the correction of errors in establishing the initial Contract Rent).

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph a(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) *Overall limitation.* Adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in section 11.b) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph a(2) of this section).

13. PHA Selection and Initial Inspection of Units

a. *PHA selection policy.* The PHA must adopt a written policy establishing criteria and procedures for selecting units to which assistance is to be attached under this Notice and must make this policy known to interested Owners. A PHA must select units in accordance with its written selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, for units to be rehabilitated in conjunction with low-income tax credits (26 U.S.C. 42), and for units to be used as limited equity cooperatives.

b. *Initial inspection and determination of unit eligibility.* (1) Before selecting a unit, the PHA must inspect the property to determine that the property meets the $1000 per assisted unit rehabilitation requirement under section 8.a. If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in section 7 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement.

(2) In addition to ascertaining whether the property meets the above repair requirement, the PHA, at initial inspection, must also consider whether the property is eligible housing in accordance with section 8 of this Notice; meets the other Federal requirements in section 10 and the site and neighborhood standards cross-referenced in section 7; and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with section 14. The PHA must also determine the number of current tenants that are lower income families.

14. Prohibition Against Rehabilitation With U.S. Housing Act of 1937 Assistance; Pledge of Agreement Or HAP Contract

a. Assistance may not be attached to any unit which was in the last five years, or will be, rehabilitated with other assistance under the U.S. Housing Act of 1937 (e.g., public housing (development or modernization), rental rehabilitation programs under 24 CFR Part 511, housing development grants under 24 CFR Part 850, other Section 8 programs, or Section 11(b) tax exempt bonds). HUD may approve attachment of assistance to a unit if attachment of project-based assistance would facilitate sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s), where the unit was rehabilitated with public housing modernization funds before conveyance to the corporation.

b. If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that:

(1) The financing documents do not purport to pledge or give greater rights or payments to any party against the PHA than are provided to the Owner under the Agreement or HAP Contract and do not contain any requirements inconsistent with the Agreement or HAP Contract;

(2) The PHA is not a party to any of the financing documents and undertakes no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing; and

(3) No modification or alteration is proposed or made to the Agreement or HAP Contract.

15. Owner Selection of Contractor.

The Owner is responsible for selecting a competent contractor to undertake the rehabilitation. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor that fails to provide a certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from participation in Federally assisted activities by any Federal department or agency under 24 CFR Part 24, or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5. The PHA must promote opportunities for minority contractors to participate in the program.

16. Work-Write-Ups, Agreement to Enter Into Housing Assistance Payments Contract and Contract Rents in Agreement

a. *Work write-ups.* The Owner must prepare work write-ups, including specifications and plans (where necessary). The work write-ups must describe how the specific work items identified by the PHA under section 13.b(1) are to be performed, including minimum acceptable levels of workmanship and materials.

b. *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this Notice. (HUD will provide the forms of Agreement and Contract shortly.) The Agreement must be executed before the start of any rehabilitation. Under the Agreement, the Owner agrees to complete rehabilitation of units in accordance with the work write-ups, as approved by the PHA. These work write-ups must be attached to the Agreement as an exhibit.

c. *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with section 11, *Initial Contract Rents*) that will apply to the units after they are rehabilitated. The amounts of the Contracts Rents that are listed in the Agreement shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with section 12).

17. Rehabilitation Period

a. *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

b. *Inspections.* The PHA must inspect during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carries out to ensure that the work meets the levels of workmanship and materials specified in the work write-ups.

c. *Changes.* The Owner must obtain prior PHA approval for any change from the work specified in the Agreement which would alter the design or quality of the rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on a reduction of the initial Contract Rents in the amount determined by the PHA. If the Owner makes any changes without prior PHA approval, the PHA may reduced Contract Rents in the amount determined by the PHA, and may require the Owner to remedy any deficiencies prior to, and as a condition for, acceptance of the units. However, initial Contract Rents shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason.

d. *Notification of vacancies.* Sixty days before the scheduled completion of the rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also section 13 and section 24).

18. Rehabilitation Completion

a. *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph b of this section.

b. *Evidence of completion.* To evidence completion of the work, the Owner must furnish the PHA with:

(1) A certificate of occupancy and/or other official approvals as required by the locality; and

(2) A certification by the Owner that:

(a) The work has been completed in accordance with the requirements of the Agreement;

(b) The unit(s) is in good and tenantable condition;

(c) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(d) The unit(s) has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials;

(e) Any unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(f) The Owner has complied with any applicable labor standards requirements in the Agreement.

c. *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph b of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality Standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

d. *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupany, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must aldo execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determined whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

19. Housing Assistance Payments Contract (Contract)

a. *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this Notice.

b. Term of Contract. The Contract term may not extend beyond the ACC expiration date for the Funding Source. Except for this limitation, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1988, the Contract could have a 4-, 7- or 15-year term.

c. *Renewal of Contracts.* A Contract that is attached to a structure under this Notice shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

d. *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under section 18. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

e. *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

20. Reduction of Number of Units Covered by Contract

Section 882.512, *Reduction of number of units covered by Contract,* applies.

21. Responsibilities of the PHA

Section 882.116, *Responsibilities of the PHA,* applies, except paragraphs (d), (f), and (j). The PHA must also:

a. Brief the Family in accordance with section 24.e;

b. Obtain requests for participation from Owners, and select projects;

c. Establish initial Contract Rents in accordance with section 11, approve rent adjustments, and make rent reasonableness determinations;

d. Inspect the project before, during, and upon completion of, rehabilitation; and

e. Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

22. Responsibilities of the Owner

Section 882.117, *Responsibilities of the Owner*, applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

23. Obligations of the Family

Section 882.118, *Obligations of the Family*, applies; however, § 882.118(a)(4) and (5), which pertain to shared housing do not apply (because shared housing is not and an eligible housing type under this Notice).

24. Family Participation

a. Section 882.209, *Selection and participation*, does not apply, except as it is expressly made applicable by this section.

b. *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (4)(ii), (4)(iii), and (6). For purposes of this Notice, a Family becomes a participant when the Family and Owner execute a Lease for a unit with project-based assistance.

c. *Determining eligibility of in-place Families.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the PHA's waiting list. (The PHA is authorized, under 24 CFR 812.3(b)(1) and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

d. *Filling vacant units.* (1) When the Owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this Notice keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the Owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

e. *Briefing of Families.* When a family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and Contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires.

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition.

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information of the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under section 28), and of the procedures for requesting a hearing.

f. *Continued assistance for a Family when the Contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unless the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with section 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

g. *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner*, applies.

h. *Lease requirements.* The Lease between the Family and the Owner must be in accordance with section 30 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

25. Maintenance, Operation and Inspections

Section 882.211, *Maintenance, operation and inspections*, does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections*, apply.

26. Reexamination of Family Income and Composition

Section 882.212, *Reexamination of Family income and composition*, does not apply. Instead, § 882.515, *Reexamination of Family income and composition*, applies.

27. Overcrowded and Underoccupied Units

a. Section 882.213, *Overcrowded and oversized units*, does not apply.

b. If the PHA determines that a Contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded, or that a Contract unit is larger than apporopriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for ths reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA

(if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in th PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contracts be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that a PHA judges to be acceptable.

28. Informal Review or Hearing

a. Section 882.216(a), *Informal review of PHA decision on application for participation,* applies, except §§ 882.216(a)(3)(ii), (iii), and (iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

b. Section 882.216(b), *Informal, hearing on PHA decision affecting participant Family,* applies, except §§ 882.216(b)(1)(iv) does not apply because there is no right to continued participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

29. Grounds For Denial or Termination of Assistance

Section 882.210, *Grounds for denial or termination of assistance,* applies, except that for purposes of this Notice the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

30. Assisted Tenancy and Termination of Tenancy

a. Section 882.215, *Assisted tenancy,* does not apply.

b. *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

c. *Termination of tenancy.* (1) Subpart A of 24 CFR Part 247, *Eviction from Certain Subsidized and HUD-Owned Projects,* applies to termination of tenancy and eviction of a family assisted under this Notice. However, § 247.4(d) is not applicable (See Exhibit C to this Notice).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under section 247.3(a)(3)).

[FR Doc. 88-25512 Filed 11-7-88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-08-4121-13]

Availability of Lithologic and Geophysical Logs From the Rawhide Village; Campbell County; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice of availability of 17 Lithologic and 36 Geophysical Logs from the Rawhide Village, N½, N½S½ Section 20 and S½S½ Section 17, T. 51 N., R. 72 W., Campbell County, Wyoming.

SUMMARY: Notice is hereby given that 17 lithologic logs, 36 geophysical logs, and 1 coal quality analysis including Wyoming State Plane Coordinates and elevations for 18 coal test holes located in the Rawhide Village, Campbell County, Wyoming are now available to the public.

The test holes, located in Township 51 North, Range 72 West, Section 20 were designed to provide additional information on the methane gas concentration within the Rawhide Village.

ADDRESS: Reproduction of the geophysical logs, lithologic logs, and quality analysis are available at cost. Contact: Edward C. Coy, Chief, Branch of Solid Minerals, Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601, telephone (307) 261-5568.

James W. Monroe,
District Manager.

Dated: October 28, 1988.

[FR Doc. 88-25839 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-22-M

[NM-060-09-4760-90]

Roswell District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Multiple Use Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Multiple Use Advisory Board.

DATE: Wednesday, November 30, 1988, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second Street, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Ft. Stanton Development; (2) Abo Gas Field; (3) Hazardous and Toxic Waste; (4) Planning Update; (5) WIPP Update; (6) Automated Mapping. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by November 22, 1988. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Francis R. Cherry, Jr.,
District Manager.

[FR Doc. 88-25840 Filed 11-7-88; 8:45 am]
BILLING CODE 4310-FB-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Managment, Boise, Idaho, effective 10:00 am., October 28, 1988.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of certain sections in T.

9 N., R. 2 E., Boise Meridan, Idaho, Group No. 645, was accepted October 18, 1988.

The plat representing the dependent resurvey of second standard parallel north, along a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 29 and 30, T. 10 N., R. 2 E., Boise Meridan, Idaho, Group No. 684, was accepted October 18, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

October 28, 1988.

[FR Doc. 88-25841 Filed 11-7-88; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

National Register of Historic Places Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 29, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 23, 1988.

Carol D. Shull,

Chief of Registration, National Register.

Connecticut

Hartford County

Atwater Manufacturing Company (Historic Industrial Complexes of Southington TR), 335 Atwater St., Southington vicinity, 88002678

Church Home, The, 123 Retreat Ave., Hartford, 88002685

Clark Brothers Factory No. 1 (Historic Industrial Complexes of Southington TR), 1331 S. Main St., Southington vicinity, 88002679

Clark Brothers Factory No. 2 (Historic Industrial Complexes of Southington TR), 409 Canal St., Southington vicinity, 88002680

Hurwood Company (Historic Industrial Complexes of Southington TR), 379 Summer St., Southington vicinity, 88002681

Peck, Stow & Wilcox Factory (Historic Industrial Complexes of Southington TR), 217 Center St., Southington vicinity, 88002682

Plantsville Historic District, Roughly bounded by Prospect St., Summer St., Quinnipiac River, Grove St., S. Main St., W. Main St., and West St., Southington vicinity, 88002673

Pultz & Walkley Company (Historic Industrial Complexes of Southington TR), 120 W. Main St., Southington vicinity, 88002677

Rogers Farm Historic District, Roughly Shuttle Meadow Rd., Long Bottom Rd., Andrews Rd., Andrews Rd., and Mine Hollow Rd., Southington, 88002688

West Street School 1432 West St., Southington, 88002689

Middlesex County

Hadlyme North Historic District, Roughly bounded by CT 82, Town St., Banning Rd., and Old Town St., East Haddam vicinity, 88002686

New Haven County

Russian Village Historic District, Roughly Kiev Dr. and Russian Village Rd., between US 6 and the Pomperaug River, Southbury, 88002687

New London County

Pequot Colony Historic District, Roughly bounded by Gardner, Pequot, Glenwood, and Montauk Aves., New London, 88002692

Plant, Morton Freeman, Hunting Lodge, 56 Stone Ranch Rd., East Lyme, 88002691

FLORIDA

Lee County

Alderman House, 2572 First St., Fort Myers, 88002690

NEW YORK

Putnam County

Gilead Cemetery, Mechanic St., Carmel, 88002684

Suffolk County

Conklin, Nathaniel, House, 280 Deer Park Ave., Babylon, 88002683

TEXAS

El Paso County

Sunset Heights Historic District, Roughly bounded by Heisig Ave., River Ave., N. El Paso St., and I-10, El Paso, 88002672

Galveston County

Steffens—Drewa House Complex, 2701, 2705, and 2709 Ave., 0, Galveston, 88002671

WEST VIRGINIA

Ohio County

North Wheeling Historic District, Roughly bounded by Main Street Ter., Market St., I-70, and N. Main St., Wheeling, 88002693

[FR Doc. 88-25843 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 221)]

CSX Transportation, Inc.; Abandonment and Discontinuance of Trackage Rights in Vinton and Jackson Counties, OH; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. to abandon its 9.00-mile line of railroad between milepost, 127.71 at Hamden, OH and milepost 136.71 at Red Diamond, OH and to discontinue service over 14.77 miles of railroad between milepost 112.94 near West Jct., OH and milepost 127.71 at Hamden, OH, all in Vinton and Jackson Counties, OH.

A certificate will be issued authorizing abandonment and discontinuance of trackage rights unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are continued in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: November 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commmissioner Lamboley dissented with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25743 Filed 11-7-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 46X)]

Norfolk & Western Railway Co.; Abandonment Exemption Between Putt and Glen Rogers, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 2.4-mile line of railroad

between milepost VG–12.1 at Putt and milepost VG–14.5 at Glen Rogers, WV.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 8, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.276(c)(2) [1] must be filed by November 18, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 28, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 13, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25744 Filed 11–7–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Financial Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General; Hidalgo County, TX

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Hidalgo County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on September 23, 1975 (40 FR 43746).

November 4, 1988.

Dick Thornburgh,

Attorney General of the United States.

[FR Doc. 88–25978 Filed 11–7–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AT&T Information Systems (IBEW) 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 interst 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 18, 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 18, 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 31st 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 Number	Articles Produced
AT&T Information Systems (IBEW)	Shreveport, LA	10/31/88	10/17/88	21,505	Telephone Equipment
Atlas Wireline Serv. (Workers)	Pearland, TX	10/31/88	10/3/88	21,506	Oil & Gas

Appendix

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Bethlehem Steel Corp. Printery Plant, (Workers).	Bethlehem, PA	10/31/88	10/18/88	21,507	Printing Services
CRC Wireline, Inc. (Company)	Odessa, TX	10/31/88	10/31/88	21,508	Oil & Gas
Carbon River Energy Partnership (Workers).	Seattle, WA	10/31/88	10/14/88	21,509	Oil & Gas
Ceja Corporation (Company)	Tulsa, OK	10/31/88	10/14/88	21,510	Oil & Gas
Classic Exploration, Inc. (Company)	Wichita, KS	10/31/88	10/17/88	21,511	Oil & Gas
Classic Exploration, Inc. (Company)	Great Bend, KS	10/31/88	10/17/88	21,512	Oil & Gas
Cleere Operating Co. (Company)	San Angelo, TX	10/31/88	10/1/88	21,513	Oil & Gas
Dawn Drilling Co., Inc. (Company)	Shreveport, LA	10/31/88	10/17/88	21,514	Oil & Gas
Diamond Energy Co. (Workers)	Olney, IL	10/31/88	10/12/88	21,515	Oil & Gas
Fulk Oil Co. (Workers)	Olney, IL	10/31/88	10/12/88	21,516	Oil & Gas
Geosearch, Inc. (Workers)	Wichita, KS	10/31/88	10/12/88	21,517	Oil & Gas
Gulf Oil Corp., Houston Acctg. Center (Workers).	Houston, TX	10/31/88	9/29/88	21,518	Oil & Gas
Health-Tex, Inc. (ACTWU)	Cranston, RI	10/31/88	10/17/88	21,519	Children's Clothing
JHJ Drilling Co. (Company)	Houston, TX	10/31/88	10/13/88	21,520	Oil & Gas
LTV Steel Co. Campbell Works (USWA)	Youngstown, OH	10/31/88	10/17/88	21,521	Steel Pipes
LTV Steel Co. Youngston Works (USWA)	Youngstown, OH	10/31/88	10/17/88	21,522	Steel Pipes
Leppaluoto Offshore Marine, Inc. (Company).	Vancouver, WA	10/31/88	10/15/88	21,523	Oil & Gas
Manley Performance Products (Company)	Bloomfield, NJ	10/31/88	10/4/88	21,524	Engine Components
McGraw-Edison Cooper Power Systems (Workers).	Zanesville, OH	10/31/88	10/18/88	21,525	Transformers & Regulators
Mellon Drilling Co. (Workers)	San Angelo, TX	10/31/88	9/14/88	21,526	Oil & Gas
P.R.O. Petroleum Operating Corp. (Company).	Shreveport, LA	10/31/88	9/29/88	21,527	Oil & Gas
Parallel Petroleum Corp. (Workers)	Midland, TX	10/31/88	10/9/88	21,528	Oil & Gas
Reed Oil Co. (Company)	Chanute, KS	10/31/88	10/17/88	21,529	Oil & Gas
Reed Oil Co. (Company)	Chanute, KS	10/31/88	10/17/88	21,530	Oil & Gas
Russell Pierce Drilling Co. (Workers)	Greenville, KY	10/31/88	10/17/88	21,531	Oil & Gas
Samson Ocean Systems Inc. (Workers)	Shirley, MA	10/31/88	10/18/88	21,532	Synthetic Rope
Santa Fe Drilling Co. (Company)	Oklahoma City, OK	10/31/88	10/18/88	21,533	Oil & Gas
Sedco Forex-Schlumberger (Workers)	Dallas, TX	10/31/88	10/16/88	21,534	Oil & Gas
Southern Illinois Oil Producers Inc. (Workers).	Olney, IL	10/31/88	10/24/88	21,535	Oil & Gas
Standard Oil Production Co., Exploration Business Unit.	Houston, TX	10/31/88	10/7/88	21,536	Oil & Gas
Stateline Drilling Co. (Workers)	Sonora, TX	10/31/88	10/14/88	21,537	Oil & Gas
Teinert Pools (Workers)	Midland, TX	10/31/88	10/16/88	21,538	Installing Swimming Pools
(The) Three B Oil Co. (Workers)	Midland, TX	10/31/88	10/12/88	21,539	Oil & Gas
Transworld Drilling (Workers)	Oklahoma City, OK	10/31/88	10/17/88	21,540	Oil & Gas
Transworld Oil U.S.S. Inc. (Workers)	Houston, TX	10/31/88	10/15/88	21,541	Oil Futures
Weatherford Oilfield Serv. (Workers)	Houston, TX	10/31/88	9/16/88	21,542	Oil & Gas
Westburne Drilling (Workers)	Denver, CO	10/31/88	10/18/88	21,543	Oil & Gas
Williams Exploration (AEWEC)	Houston, TX	10/31/88	10/12/88	21,544	Oil & Gas
Wilson Drilling Co. (Workers)	Albion, IL	10/31/88	10/10/88	21,545	Oil & Gas

[FR Doc. 88-25838 Filed 11-7-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ECONOMIC COMMISSION

Meeting Cancellation

AGENCY: Naitonal Economic Commission.

ACTION: Cancellation of public meeting on November 15.

SUMMARY: The National Economic Commission meeting scheduled for November 15, 1988 from 3–6 p.m. has been cancelled. The meeting was to have been devoted to hearing from members of Congress. The commission will announce a subsequent date for this meeting.

FOR ADDITIONAL INFORMATION CONTACT: Jim Hildreth at 703–425–89869 or 202–789–1993, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-25775 Filed 11-7-88; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by

grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

(1) *Date:* November 21, 1988.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after April 1, 1989.

(2) *Date:* November 22, 1988.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for Higher Education in the Humanities, submitted to the Division of Education Porgrams, for projects beginning after April 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-25801 Filed 11-7-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Rescheduled Meeting

The Federal Register published on Thursday, October 27, 1988 (53 FR 43488) contained notice of a meeting of the ACRS Subcommittee on Reliability Assurance to be held on Tuesday, November 22, 1988, in Room P-114, 7920 Norfolk Avenue, Bethesda, MD. This meeting has been rescheduled for Monday, December 12, 1988. The meeting will start at 8:30 a.m. and is expected to be adjourned around 1:30 p.m. All other items pertaining to this meeting remain the same as previously published.

Date: November 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-25778 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Cancellation of Meeting

The ACRS Subcommittee meeting on Auxiliary and Secondary Systems scheduled to be held on November 22, 1988 has been cancelled. The notice of this meeting was previously published in the Federal Register on Thursday, October 27, 1988 (53 FR 43488).

Date: November 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-25779 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-603-CP/0L (ASLBP No. 88-570-01-CP/0L and Docket No. 50-604-CP (ASLBP No. 88-571-01-CP)]

All Chemical Isotope Enrichment, Inc., AIChemIE Facility-1 CPDF and AIChemIE Facility-2 Oliver Springs; Hearing

November 2, 1988.

Before Administrative Judges: Morton B. Margulies, Chairman; Dr. Emmeth A. Luebke; and Dr. Oscar H. Paris.

Notice is hereby given that hearings will be held in the captioned construction permit application proceedings on December 21, 1988, at 9:30 a.m., local time, at the University of Tennessee, College of Law Moot Courtroom, 1505 West Cumberland Avenue, Knoxville, Tennessee.

In the application docketed No. 50-603-CP/OL, All Chemical Isotope Enrichment, Inc. seeks a construction permit for a facility to use centrifugal machines to enrich nonradioactive isotopes at the existing Centrifugal Plant Demonstration Facility site located in Oak Ridge, Tennessee. In the application docketed No. 50-604-CP All Chemical Isotope Enrichment, Inc. seeks a construction permit for a facility to use centrifugal machines to enrich nonradioactive isotopes at the proposed AIChemIE Facility-2 site, at Olive Spring, Tennessee. The nonradioactive isotopes would be used for medical, industrial, environmental and energy conservation purposes. Commission licenses are required because of the capability of the centrifuge machines to enrich uranium.

The hearings are to be held pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 50, "Domestic licensing of Production and Utilization Facilities", Part 51 "Licensing and Regulatory Policy and Procedures for Environmental Production" and Part 2, "Rules of Practice for Domestic Licensing Proceedings".

The issues in the construction permit application Docket No. 50-603-CP/OL are as follows:

1. Whether, in accordance with the provisions of 10 CFR 50.34, the applicant has described the proposed design of the facility including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein to assure adequate protection of the common defense and security.

2. Whether the applicant is technically and financially qualified to modify the existing facility in such a way as to assure adequate protection of the common defense and security.

3. Whether the issuance of a construction permit authorizing the modification of the facility will be inimical to the common defense and security.

4. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permit and operating license should be issued as proposed.

The construction permit issues in Docket No. 50-604-CP are identical to those in Docket No. 50-603-CP/OL except the former involves the modification of an existing facility, and the latter the construction of a proposed facility.

The parties to the proceedings are Applicant, All Chemical Isotope Enrichment, Inc. and NRC Staff. The State of Tennessee has filed a request to participate as an interested state pursuant to 10 CFR 2.715(c). The applications are unopposed.

Limited appearances pursuant to 10 CFR 2.715(a) will be permitted to be made during a session of the hearings and will be scheduled in a further notice. Persons desiring to submit written limited appearance statements, in advance of the hearings, should submit them to the Office of the Secertary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555 with a copy to the Chairman of the Atomic Safety and Licensing Board.

It is so ordered.

For the Atomic Safety and Licensing Board.

Morton B. Margulies

Chairman Administrative Law Judge.

Dated at Bethesda, Maryland this 2nd day of November 1988.

[FR Doc. 88-25780 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335-OLA (ASLBP No. 88-560-01-LA)]

Florida Power & Light Co., St. Lucie Plant, Unit No. 1; Hearing

November 2, 1988.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Glenn O. Bright; and Dr. Richard F. Cole.

Please take notice that an evidentiary hearing on the issues remaining in this proceeding will begin at 9:00 a.m. on Tuesday, December 6 and continue through Thursday, December 8, 1988, at the Howard Johnson Lodge, Sailfish Room 950 S. Federal Highway, Stuart, Florida.

The Board will hear Limited Appearance Statements pursuant to 10 CFR 2.715(a) (1988) from 4:00 p.m. to 5:00 p.m. on December 6, 1988. Oral statements will be limited to five minutes each and may be supplemented or replaced by written statements sent to the Board at: Office of the Secretary, Attention: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

Dated at Bethesda, Maryland, this 2nd day of November 1988.

[FR Doc. 88-25781 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pacific Gas and Electric Company (the Licensee) to withdraw ts September 24 and October 30, 1987 applications to amend the Diablo Canyon Nuclear Plant Licenses and Technical Specifications. The September 24, 1987 application (designated LAR 87-08) requested an extension of the submittal date for the Long Term Seismic Program Seismic Report until July 31, 1989. The October 30, 1987 application (designated LAR 87-09) requested an extension to the three-day Limiting Condition for Operation of the Swing Diesel Generator 1-3. The Commission issued Notices of Consideration of Issuance of Amendments in the **Federal Register** on October 21, 1987 (52 FR 39304) for LAR 87-08 and on December 16, 1987 (52 FR 47812) for LAR 87-09. By letters dated January 19 and May 6, 1988 the licensee withdrew both applications for amendments. For LAR 87-08, the licensee stated that the withdrawal was precipitated by the revised hearing schedule by California Public Utilities Commission for Diablo Canyon Rate Case; and for LAR 87-09, the licensee stated that implementation of additional actions while the diesel generator 1-3 would be out of service and receipt of NRC approval could not be accomplished prior to the next Unit 1 refueling outage. Consequently, the licensee requested that the September 24 and October 30, 1987 applications for amendments be withdrawn.

For further details with respect to this action, see (1) the applications for amendments dated September 24 and October 30, 1987 and (2) the licensee's letters of January 19 and May 6, 1988 requesting withdrawal of the applications. All of the above documents are available or public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the California Polytechnic University Library, Government Documents and Maps Department, San Francisco, California 94120.

Dated at Rockville, Maryland, this 31st day of October 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25782 Filed 11-7-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

American British Enterprises, Inc.; Order of Suspension of Trading

November 3, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American British Enterprises, Inc. ("American British") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the location of Amercian British's principal executive offices, the nature and extent of its current and proposed business activities, its financial condition, the identity of its officers and affiliates, and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of American British.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of American British, over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EST), November 3, 1988, through 11:59 p.m. (EST) on November 12, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25763 Filed 11-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16618; (812-7107)]

RBSG Capital Corp.; Application

November 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: RBSG Capital Corporation (the "Applicant").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, a wholly-owned finance subsidiary of a foreign bank holding company, seeks an order to permit the issuance and sale of Applicant's debt securities in the United States.

Filing Dates: The application was filed on August 24, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of servcie by affidavit or, for

attorneys, by ceritificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Bruce W. Nichols, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is incorporated in Delaware and is the newly established and wholly-owned finance subsidiary of The Royal Bank of Scotland Group plc ("RBSG"). Applicant was established solely to make debt offerings in the United States to finance the business operations of RBSG.

2. RBSG, a holding company incorporated in Great Britian and registered in Scotland, provides a comprehensive range of commercial banking and other financial services through its subsidiary and associated companies (together with Applicant and RBSG, the "Group"). RBSG's principal subsidiary, The Royal Bank of Scotland plc (the "Bank"), maintains an extensive network of branches in the United Kingdom ("U.K.") and also maintains branches, subsidiaries or representative offices in a number of other countries.

3. By an order issued March 1, 1988 (Investment Company Act Release No. IC–16295) (the "RBSG Order"), the SEC exempted RBSG from all provisions of the 1940 Act pursuant to section 6(c). The RBSG Order permits RBSG to issue in the United States, equity securities in the form of American depositary shares evidenced by American depositary receipts, and also commercial paper notes and other long-term and short-term debt instruments.

4. The Group constitutes the largest banking group based in Scotland, with total consolidated assets of approximately 20.6 billion pounds sterling and total consolidated deposits of approximately 17.7 billion pounds sterling at March 31, 1988. As of March 31, 1988, the rate of exchange was $1.88 to one pound sterling. More than 89% of the Group's consolidated operating profits for the financial half-year ended March 31, 1988 were attributable to retail and commercial banking activities conducted by the Bank. Like most United States banking groups, the Group's principal business consists of receiving deposits and making loans and its operating revenue is derived principally from interest on loans.

5. The Bank of England, the central bank of the United Kingdom, exercises general supervision over all deposit-taking institutions in the United Kingdom in a manner similar to the central banks of most European countries and the United States. The Bank is an "authorized institution" for purposes of the U.K. Banking Act of 1987 (the "1987 Act"). The 1987 Act provides for a licensing and recognition system under which deposit-taking institutions in the United Kingdom must be licensed by the Bank of England, and must meet general statutory criteria of prudential management. As an "authorized institution" the Bank must meet certain statutory criteria, including that directors, managers and controlling persons are "fit and proper persons", and it is subject to extensive power by the Bank of England to make investigations into its business, ownership and control. RBSG files regular, detailed reports and periodic statistical returns as prescribed by the Bank of England, and its senior executives are in close consultation with the Bank of England.

6. The Bank's most significant presence outside the United Kingdom is in the United States, where it maintains a branch and representative office in New York City, an agency and representative office in San Francisco and representative offices in Chicago, Houston and Los Angeles. The Group's operations in the United States subject the Bank, and to a more limited extent, RBSG to the supervisory authority of the Board of Governors of the Federal Reserve System (the "FRB") and subject the Bank to the supervisory authority of the banking departments of the states of New York and California, and to a more limited extent, Illinois and Texas. As a foreign banking organization engaged through a branch of a subsidiary bank in the business of banking in the United States, RBSG and the Bank are subject to certain provisions of the International Banking Act of 1978, as amended (the "IBA"). The IBA requires RBSG and the Bank to file an annual report with the FRB on Form F.R. Y–7, together with a Confidential Report of Operations on Form F.R. 2068. Under the IBA, the Bank's branches and agencies are (1) required to maintain reserves with the local Federal Reserve Banks, (2) required to submit call reports to the FRB in the same manner as member banks, and (3) subject to examination by the FRB.

7. On August 1, 1988, RBSG filed an application with the FRB on Form FR–1F requesting prior approval pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), to become a U.S. bank holding company by acquiring 100% of the outstanding common stock of Citizens Financial Group, Inc. ("CFG"). CFG is a bank holding company incorporated in Delaware in 1984, the principal subsidies of which are Citizens Trust Company, a Rhode Island commercial bank; Citizens Savings Bank, a Rhode Island stock savings bank; and Fairhaven Savings Bank, a Massachusetts savings bank acquired by CFG on June 30, 1988. RBSG expects to consummate the acquisition of CFG in late 1988 after obtaining all regulatory approvals. After its acquisition of CFG, RBSG will become subject to the full panoply of U.S. bank holding company regulation under the BHC Act.

8. The Bank's New York branch, which on June 1, 1988 had total assets of approximately $145 million, is subject to supervision and examination by the New York State Banking Department. The New York branch is inspected quarterly by staff of the New York State Banking Department and is also subject to a full examination at least once every two years. The Bank's San Francisco agency, although smaller in terms of assets than the New York branch, is supervised in a similar manner and extent by California banking authorities. In addition, the Chicago and Houston representative offices are each subject to regulation and supervision, though to a significantly lesser extent than branches or agencies, by the banking authorities of Illinois and Texas, respectively.

9. Applicant proposes to issue and sell debt securities in the United States, including commercial paper notes or other short and long-term debt instruments. Applicant is seeking the requested order so that RBSG may sell debt securities through a finance subsidiary organized under the laws of a U.S. jurisdiction. All debt securities issued by Applicant will be direct obligations of Applicant.

10. Applicant undertakes that any of its debt securities issued to or held by the public will be unconditionally

guaranteed by RBSG as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of RBSG, and such debt securities may be guaranteed on a joint and several basis by RBSG and the Bank).

11. Applicant undertakes that RBSG's guarantee will provide that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities issued by the Applicant, the holders of those securities may institute legal proceedings directly against RBSG to enforce the guarantee without first proceeding against the Applicant.

12. Applicant undertakes that it will invest in or loan to RBSG or companies controlled, by RBSG, at least 85% of any cash or cash equivalents that it raises through an offering of its debt securities or through other borrowings as soon as practicable, but in no event later than six months after its receipt of such cash and cash equivalents.

13. Applicant undertakes that it will not invest in, reinvest in, own, hold or trade in securities other than U.S. Government securities, securities of RBSG or a company controlled by RBSG or debt securities (including repurchase agreements) that are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

14. Applicant states that in connection with its application, RBSG will submit expressly to the jurisdiction of New York State and United States federal courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of the offering of Applicant's debt securities in the United States or RBSG's role as guarantor of the payment of principal, interest, and premium on such securities. In that connection RBSG will appoint a corporation with an office in the City of New York engaged in providing corporate services for lawyers as agents to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable for as long as any of Applicant's debt securities issued in reliance upon an order of the SEC are outstanding in the United States. No such submission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such debt securities of bring suit in any court which may have jurisdiction over Applicant or RBSG by virtue of Applicant's offer and sale of its debt securities or otherwise. The agent for service of process will not be a trustee for the holders of any securities issued by the Applicant or have any responsibilities or duties to act for such holders as would a trustee.

15. Applicant undertakes that it will not make any offering of its securities in the United States in reliance upon the proposed order of exemption if either: (1) The Bank ceases to be regulated as a commercial bank in the United Kingdom, or (2) the Bank ceases to be subject to banking regulation in the United States. Applicant also represents that (a) RBSG has no present intention of causing the Bank to withdraw its presence in the United States that subjects the Bank and RBSG to banking regulation in the United States and (b) RBSG has no present intention of causing the Bank to limit its presence in the United Kingdom that subjects the Bank and RBSG to banking regulation in the United Kingdom.

Applicant's Legal Analysis

1. The exemption from registration under the 1940 Act afforded to foreign banks and their finance subsidiaries by Rule 6c–9 is technically not available to the Applicant, as the Applicant is a finance subsidiary of a foreign bank holding company and not of a foreign bank. However, Applicant has met, or has undertaken in its application to meet, all of the substantive requirements for an exemption from registration under Rule 6c–9 as if the exemption contained therein is available to the Applicant.

2. Applicant asserts that the proposed exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant further submits that the exemption will advance the policies underlying the IBA of nondiscriminatory treatment of foreign banks in the United States.

Applicant's Condition

If the requested order is granted, the Applicant agrees to the following condition:

1. Applicant consents to any SEC order being expressly conditioned on its compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25802 Filed 11–7–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records

The Department of Transportation (DOT) herewith publishes a proposal to amend a system of records.

Any person or agency may submit written comments on the proposed altered system to: Lieutenant Commander L. M. Kenney, U.S. Coast Guard, Office of Personnel and Training, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, November 2, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement Department of Transportation Office of the Secretary On Behalf of the United States Coast Guard For Alteration of the Alcohol Abuse Prevention Program Record System DOT/CG–638, Formerly the Drug and Alcohol Abuse Prevention Program Record System DOT/CG–638

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the Alcohol Abuse Prevention Record System, DOT/CG–638, to cover all records maintained by the Coast Guard pertaining to alcohol abuse prevention programs for Coast Guard members.

The purpose of this notice is to revise the system to reflect the transfer of the alochol abuse prevention, treatment, and education program from Coast Guard Headquarters, Office of Personnel and Training to Coast Guard Headquarters, Office of Health Services, and to provide the changes in system manager and system location addresses.

The changes include amendments to:

a. System name, categories of records, and categories of individuals to reflect the elimination of drug rehabilitation records, since drug abusers are no longer retained in the Coast Guard, and the Coast Guard provides alcohol rehabiliation only for active duty members; and

b. System location, retention and disposal, and system manager to reflect transfer of responsibility for alcohol

treatment records to the Office of Health Services, U.S. Coast Guard.

Since this proposal is an amendment of an existing record system, the probable effects of this proposal on the privacy interests of the general public is minimal.

Authority for maintenance of the system is contained in 5 U.S.C. 3301 and 7901; 21 U.S.C. 1101; 42 U.S.C. 4541 and 299dd–1; and 44 U.S.C. 3103.

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 *et seq.*; 21 U.S.C. 1101 *et seq.*; and 42 CFR Part 2) and participation in the programs is limited to active duty members of the Coast Guard. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department of Transportation to safeguard these records is given under the appropriate heading of the attached Federal Register system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular A–130 Appendix I, dated December 12, 1985.

DOT/CG–638

SYSTEM NAME:

Amended to "USCG Alcohol Abuse Prevention Program Record System" to reflect the elimination of drug related records from the system.

SYSTEM LOCATION:

Amended to reflect relocation of record system from Coast Guard Headquarters to U.S. Coast Guard Maintenance and Logistics Command, Atlantic and U.S. Coast Guard Maintenance and Logistics Command, Pacific. This more accurately describes current Coast Guard practices as those commands now administer the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amended to reflect that only active duty Coast Guard members are covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Amended to remove all references to drug rehabilitation records. Drug abusers are no longer retained in the Coast Guard. All records of drug rehabilitation were retained for three years and have been destroyed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amended to reflect that there are no routine uses of the records outside the Department of Transportation.

STORAGE, RETRIEVABILITY, ACCESSING, RETAINING, SAFEGUARDS:

Amended to reflect locations, methods of retrieving and access, retention periods, and safeguards established by new system manager.

SYSTEM MANAGERS AND ADDRESS:

Amended to reflect new system manager and location.

NOTIFICATION PROCEDURE:

Amended to indicate new system manager and location.

RECORD ACCESS PROCEDURES:

Amended to reflect new access control offices and procedures.

CONTESTING RECORDS PROCEDURES:

Amended to reflect change in location of records and change in system manager.

RECORD SOURCE CATEGORIES:

Revised to more accurately reflect current procedures and include treatment facility sources.

DOT/CG–638

SYSTEM NAME:

USCG Alcohol Abuse Prevention Program Record System

SYSTEM LOCATION:

Records are maintained in the office of:

a. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Atlantic, New York, NY 10004–5098.

b. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Pacific, Alameda, CA 94501–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Coast Guard personnel receiving alcohol rehabilitation treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alcohol rehabilitation particulars which include: Name, Social Security Number, Prior Service, Rate/Rank, Date of Birth, History of Alcohol Abuse, Treatment Center, Dates of Treatment, Notes on Aftercare, and Final Disposition and Type.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on file cards (3" X 5") and/or a computer data base.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

File cards are maintained in locked filing cabinets. The computer data base is protected by password access limited to the Alcohol Program Managers.

RETENTION AND DISPOSAL:

Records will be destroyed three years after last activity.

SYSTEM MANAGERS AND ADDRESS:

Commandant (G–KOM), United States Coast guard, 400 7th Street SW., Washington, DC 20590–0001.

NOTIFICATION PROCEDURE:

Written inquiries shall be submitted to the Alcohol Program Manager in the area in which the member most recently received treatment, at the following addresses:

a. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Atlantic, New York, NY 10004–5098.

b. Commander, U.S. Coast Guard, Maintenance and Logistics Command, Pacific, Alameda, CA 94501–5100.

RECORD ACCESS PROCEDURES:

Access may be obtained by writing to, or visiting Commander, U.S. Coast Guard Maintenance and Logistics Command, Atlantic, or U.S. Coast Guard Maintenance and Logistics Command, Pacific, at the addresses in "System location." Written requests must be signed by the member. An individual visiting the Maintenance and Logistics Command must provide identification to obtain access to records. A military identification card, a driver's license, or similar document will be considered suitable identification.

a. For individuals undergoing treatment, the record is maintained at the Coast Guard Maintenance and Logistics Command responsible for the geographic region where the member is permanently assigned.

b. For individuals who have completed treatment, the record is maintained at the Coast Guard Maintenance and Logistics Command responsible for the geographic region where treatment was completed.

CONTESTING RECORDS PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

a. Personnel records.

b. Medical records.

c. Security records.

d. Treatment facility reports.

e. Post treatment aftercare reports.

[FR Doc. 88-25783 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-88-43]

Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 2, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 18881.

Petitioner: Experimental Aircraft Association.

Regulations Affected: 14 CFR 91.22(a)(1).

Description of Relief Sought: To extend Exemption No. 2689, as amended, that allows members of the International Aerobatic Club to participate and practice for participation in aerobatic competition without meeting the fuel requirement for flight under visual flight rules.

Docket No.: 25688.

Petitioner: Air Specialties Corp. d/b/a Air America.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought: To allow Hong Kong Aircraft Engineering Company to perform maintenance work outside of the United States on petitioner's L-1011 aircraft and components, including the Rolls Royce RB-211 engines and auxiliary power plant units used with these aircraft.

Docket No.: 25702.

Petitioner: Braathens South American and Far East Airtransport A-S.

Section of the FAR Affected: 14 CFR 21.197(c).

Description of Relief Sought: To allow operation of petitioner's aircraft under special flight permit with continuing authorization.

Docket No.: 17145.

Petitioner: United Airlines.

Section of the FAR Affected: 14 CFR 121.665 and 121.697 (a) and (b).

Description of Relief Sought/ Disposition: To extend Exemption No. 2466, as amended, that allows petitioner to use computerized loan manifests which bear the printed name and position of the person responsible for loading the aircraft.

Grant, October 26, 1988, Exemption No. 2466F.

Docket No.: 23492.

Petitioner: United States Hang Gliding Association.

Regulations Affected: 14 CFR 103.1 (a) and (b).

Description of Relief Sought Disposition: To extend Exemption No. 4721 that allows petitioner to operate two-place unpowered ultralight vehicles for the purpose of sport, recreation, or other purposes.

Grant, October 24, 1988, Exemption No. 4721A.

Docket No.: 25055.

Petitioner: Officine Aeronavali Venezia, s.p.a.

Section of the FAR Affected: 14 CFR 145.73(a).

Description of Relief Sought/ Disposition: To allow petitioner to perform modifications converting U.S.-registered McDonnell Douglas passenger DC-8 aircraft to all-cargo aircraft, without complying with the requirements for a foreign repair station to work only on U.S.-registered aircraft used in operations conducted wholly or partly outside of the United States.

Grant, October 25, 1988, Exemption No. 4987.

[FR Doc. 88-25739 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan Motor Co.

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Nissan Motor Company (Nissan) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Nissan "Model Q" carline for Model Year 1990. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements. Therefore the agency grants the petition.

DATE: The exemption granted by this notice will become effective beginning with the 1990 model year.

SUPPLEMENTARY INFORMATION: This agency received a submission dated July 13, 1988 from Nissan Motor Company (Nissan) seeking an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petition for Exemption from the Vehicle Theft Prevention Standard.* The agency reviewed the July 13, 1988 submission and concluded that it constituted a complete petition. Accordingly, July 13, 1988 is the date on which the statutory 120 day period for procesing Nissan's petition began. The agency further decided to grant the company's request under 49 CFR Part 512 to treat new product plans for Model Year 1990 and certain design specifications as confidential business information.

In its petition, Nissan included a detailed description of the identity, design, and location of the components

of the antitheft device, including diagrams of the components and their location in the vehicle. Nissan states that the Nissan "Model Q" will have the same antitheft device that is currently standard on the Nissan 300ZX and Nissan Maxima models.

To activate the system, the driver must turn the ignition switch to the "OFF" position, and ensure that all doors, the hood, and the trunk lid are closed and locked. The doors may be locked either with or without the key. If an unauthorized entry is attempted through the doors, the hood, the trunk lid, if any of the key cylinders are tampered with, or if either of the doors or the trunk lid should be opened by releasing the inside door lock knob or by using the opener switch, the headlights will flicker on and off and the alarm (horn) will sound.

Additionally, the system is armed with a starter interrupt function so that, if tampering does occur, the engine will not start. The alarm automatically turns off in 2 to 4 minutes. However, if one of the protected areas is tampered with again, the alarm will sound once more. If this occurs, the alarm will continue to sound and the starter will not operate until the door or trunk lid is unlocked with the key. Once the system has been activated, it may be turned off only by unlocking either the doors or trunk lid with the key or by turning the ignition switch to the "ACC" or "ON" position. "Model Q" is also equipped with a steering column locking device, so that, if an unauthorized person should forcibly break the steering column locking device and the ignition switch is jump-started, the interrupt relay will be activated by preventing the starter motor from operating. Switches, sensors and control units are located within protected areas in the vehicle to prevent the antitheft device from being defeated or circumvented.

An indicator light on the cluster panel illuminates different signals to let the driver know the condition of the warning system. If the ignition switch is in the "OFF" position and if the doors, hood, or trunk lid are open, the indicator light will flicker to remind the driver to arm the system. If the doors are closed and then left unlocked, the light will go off and the vehicle will be left unarmed. The indicator light will come on for approximately 30 seconds when the last door (hood or trunk lid) is locked, after which the light will go off to indicate that the warning system is armed.

Nissan further states that extensive testing has been conducted to demonstrate the reliabiliy and durability of its antitheft device. Nissan's testing confirmed the device's tolerance for: temperature extremes, stress, shock, vibration, humidity, repeated operation, static electricity, and other factors.

Nissan believes that its antitheft device will reduce and deter theft of the "Model Q" based on reduced theft rates of the 300ZX and Maxima carlines which are presently equipped with the same device. The company based its belief upon theft data for Model Years 1983/1984, which the agency has published at 50 FR 46666. Nissan states that the 300ZX has been equipped with the antitheft device since the model designation was changed from 280ZX to 300ZX in July 1983. Nissan also states that thefts of the 300ZX dropped significantly in that model line, resulting in a 51 percent decrease for the Model Year 1984 theft rates and 42 percent drop in the Model Year 985 theft rates as compared to the MY 1983 theft rates (per 1,000 vehicles). Compared to the MY 1983 theft rates, further analysis revealed that thefts of the 300ZX dropped, resulting in a 30 percent decrease for Model Year 1986, and a 45 percent decrease for Model Year 1987 (per 1,000 vehicles).

Additionally, Nissan reports that the Maxima has been equipped with the antitheft device since the model designation was changed from 810 to Maxima in October 1984. Compared to the Model Years 1983/84 theft rates, the Maxima car line had a 47 percent decrease in theft rates for Model Year 1985, a 3.1 percent decrease for Model Year 1986, and a 25 percent increase in theft rates for Model Year 1987 (per 1,000 vehicles).

Nissan believes that reductions of theft rates for the 300ZX and Maxima models are primarily caused by the antitheft device. Since the Nissan "Model Q" will be equipped with the same antitheft device as the 300ZX and the Maxima, they expect that the antitheft device of the "Model Q" will be as effective in reducing and deterring theft in that line. The agency granted Nissan's petition for exemption from the parts-marking requirements of Part 541 for the Maxima and 300ZX carlines beginning with the 1987 Model Year (See 51 FR 24779).

Based on substantial evidence, the agency believes that the antitheft device for the Model Year 1990 "Model Q" carline is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-making requirements of the theft prevention standard (49 CFR Part 541).

This determination is based on the information Nissan submitted with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided on its device. This information included a description of reliability and functional test procedures prescribed by Nissan's engineering department for the antitheft system and its components. Nissan noted also that the function and design of its antitheft device are identical to those of other devices that the agency has considered likely to be at least as effective as complying with Part 541 would be.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimus*. Therefore, NHTSA suggests that if Nissan contemplates making any changes the effects of which might be characterized as *de minimus*, then the company should consult the agency

before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on November 3, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-25819 Filed 11-7-88; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee For Environmental Hazards; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Veterans' Advisory Committee for Environmental Hazards has been renewed two year period beginning October 24, 1988 through October 24, 1990.

Dated: October 28, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Deputy Administrator for Public Affairs.

[FR Doc. 88-25741 Filed 11-7-88; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held November 17, 18 and 19, 1988. The purpose of the meeting is to enable the committee to have first hand experience of VA health care services for Vietnam era veterans through review of treatment units, and discussions with VA mental health professionals and veteran patients. This meeting will be a field meeting primarily conducted at the Tacoma Vet Center and American Lake VA Medical Center. The Tacoma Vet Center is located at 4801 Pacific Avenue, Tacoma, Washington 98408, and American Lake VA Medical Center is located at Veterans Dr., Tacoma, Washington 98493. The meetings on November 17 and 18 will begin at 8:30 a.m. and conclude at 4:30 p.m. Both day's agenda will consist of direct observations of several VA treatment units and facilities to include the Post-Traumatic Stress Treatment Program, Alcohol/Drug Treatment Program, Mental Hygiene Clinic, and the Tacoma Vet Center. The agenda for November 17 will also include a Committee small group tour of VA facilities in Seattle, Washington to include the Vet Center, Medical Center, and Regional Office. The Seattle Vet Center is located at 1322 East Pike Street, Seattle, Washington 98122 and the Seattle Medical Center is located at 1661 S. Columbian Way, Seattle, Washington 98108.

The address of the Seattle Regional Office is 915 Second Avenue, Seattle, Washington 98174. The Committee will tour mental health facilities at both the Vet Center and Medical Center, and they will meet with the Regional Office director and his staff to review issues of adjudication and compensation of post-traumatic stress disorder claims.

The second day's agenda will also consist of a stationary meeting at American Lake VAMC in conference with several VA officials regarding overall mental health services for Vietnam era veterans. Participating VA officials include the Medical Center Director, the Chief of Staff, the Chiefs of Psychiatry, Psychology, and Social Work Services. The Directors for all Medical Center mental health programs will also participate. The meeting on November 19 will begin at 8:30 a.m. and conclude at 12 noon. The third day's agenda will consist of a committee executive meeting regarding committee deliberations, recommendations, and future work plans.

The meeting will be closed from 8:30 a.m. to 4:30 p.m. on Thursday, November 17 and Friday, November 18, in accordance with provisions cited in 5 U.S.C. 552b(c)(6). During this portion of the meeting, the committee will be engaging in discussions with VA mental health professionals and veterans. These discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on November 19 will be located at the Sheraton Hotel, 1320 S. Broadway Plaza, Tacoma, Washington 98402, and will be open to the public to the seating capacity of the room.

This meeting notice provides for less than 15 days notice. It is not possible in the near future to convene the group at this particular location and time. The meeting must be held at the scheduled times in order to avoid adverse effects on agency services to Post Traumatic Stress Disorder.

Anyone having questions concerning the meeting may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202-233-3317/3303).

Date: November 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-25892 Filed 11-7-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 218
Tuesday, November 8, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, November 14, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations—(Office of Management)

Closed Session

Discussion of a Certain Commissioner's Charge

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Dated: November 3, 1988

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–25858 Filed 11–4–88; 10:09 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM:

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, November 14, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–25912 Filed 11–4–88; 2:59 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Open Special Conference; November 15, 1988

TIME: 10:00 a.m.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

MATTER TO BE DISCUSSED:

Finance Docket No. 30965 (Sub-No. 1). *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company—Review of Arbitral Award.*

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25893 Filed 11–4–88; 1:45 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 7, 14, 21, and 28, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 7

Wednesday, November 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Thursday, November 10

10:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting).

Week of November 14—Tentative

Wednesday, November 16

10:00 a.m.
Briefing on Status of Location of Exploratory Shaft at Yucca Mountain (Public Meeting).

Thursday, November 17

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of November 21—Tentative

Wednesday, November 23

10:00 a.m.
Briefing on Effectiveness of Diagnostic Evaluations (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

2:00 p.m.
Briefing on Accident Management Program (Public Meeting).

Week of November 28—Tentative

Thursday, December 1

10:00 a.m.
Meeting with State of Nevada on High Level Waste Program (Public Meeting) (Tentative).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Carr was not present and Commissioner Curtiss did not participate) on November 2, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of 10 CFR Part 73—Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material" scheduled for November 2, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

November 4, 1988.

[FR Doc. 88–25899 Filed 11–4–88; 2:11 pm]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 1:00–4:00 p.m. Monday, November 14, 1988.

PLACE: World Affairs Center, 312 Sutter Street, San Francisco, CA.

STATUS: Open (telephone 415–982–2541 for reservations).

PURPOSE AND AGENDA: The third of a series of Public Workshops scheduled by the growing United States Institute of Peace, "A Preliminary Discussion of the U.S. Public Effort for Peace, 1984–1988," will focus on basic questions regarding the national, nongovernmental effort for a more peaceful world. The panel members will be drawn from the scholarly, philanthropic, exchange, and educational worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202–457–1700.

Dated: November 1, 1988.

Samuel W. Lewis,

President.

[FR Doc. 88–25842 Filed 11–3–88; 4:56 pm]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 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 HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Nonpayment Policy for Consultative Examination Appointments That Are Not Kept

Correction

In proposed rule document 88-23218 beginning on page 39487 in the issue of Friday, October 7, 1988, make the following corrections:

1. On page 39488, in the second column, in the second complete paragraph, in the 10th line, "of" should read "on".

2. On the same page, in the third column, under *Executive Order 12291*, in the second paragraph, in the sixth line, "$302 million" should read "$3.2 million".

§ 404.1624 [Corrected]

3. On page 39489, in the first column, in § 404.1624(b), in the third line, "of" should read "a".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List

Correction

In notice document 88-23069 beginning on page 39367 in the issue of Thursday, October 6, 1988, make the following corrections:

1. On page 39369, in the 1st page-column, under **California**, in the second table-column, in the 14th entry,"Gilro City" should read "Gilroy City".

2. On the same page, in the 2nd page-column, in the 2nd table-column, in the 21st entry, "Serra County" should read "Sierra County".

3. On the same page, in the same page-column, under **Colorado**, in the first table-column, in the first entry, "Admas County" should read "Adams County".

4. On the same page, in the same column, under **Colorado**, in the second table-column, in the second entry, "Paurora City" should read "Aurora City".

5. On the same page, in the 3rd page-column, under **Florida**, the 15th entry in the 1st table-column ("St. Lucie County Less Port") and the corresponding entry in the 2nd table column ("Pierce City") should be removed.

6. On the same page, in the same page-column, under **Florida**, in the 2nd table column, in the 16th entry, before "Port St. Lucie City" insert "St. Lucie County Less Fort Pierce".

7. On page 39370, in the second page-column, in the first table-column, in the seventh entry, "Twihs Falls City" should read "Twins Falls City".

8. On the same page, in the same page-column, under **Illinois**, in the 2nd table column, in the 25th entry, "St. Clear County" should read "St. Clair County".

9. On the same page, in the third page-column, in the first table-column, in the fourth entry, "Joliet County" should read "Joliet City".

10. On the same page, in the same page column, in the first table-column, in the eighth entry, "Ls Salle County" should read "La Salle County".

11. On page 39371, in the 1st page-column, in the 1st table-column, in the 15th entry, "Kokomo County" should read "Kokomo City".

12. On the same page, in the same page-column, in the same table-column, in the 21st entry, "Muncie County" should read "Muncie City".

13. On the same page, in the 3rd page-column, in the 2nd table-column, in the 32nd entry, after "Owensboro City" remove the period and insert "in Davies County.".

14. On page 39372, in the 3rd page-column, in the 1st table-column, in the 15th entry, "Jackson County" should read "Jackson City".

15. On page 39374, in the first page-column, under **New Jersey**, in the first table-column, in the second entry, "Camdem City"should read "Camden City".

16. On the same page, in the 2nd page-column, under **New York**, in the 2nd table-column, in the 12th entry, "Orelans County" should read "Orleans County".

17. On page 39375, in the 3rd page-column, in the 1st table-column, in the 52nd entry, "Sanbana Municipo" should read "Sanbana Grande Municipa"; and in the 2nd table-column, in the corresponding entry, make the same correction.

18. On page 39376, in the first page-column, under **Tennessee**, in the first table-column, in the ninth entry, "Clarksville County" should read "Clarksville City".

19. On the same page, in the 3rd page-column, in the 2nd table-column, in the 18th entry, after "Houston City." insert "Missouri City.".

20. On the same page, in the same page-column, in the 1st table-column, in the 37th entry "Harlingen County" should read "Harlingen City".

21. On page 39377, in the 3rd page-column, under **Washington**, in the 1st table-column, in the 21st entry, "Longview County" should read "Longview City".

22. On page 39378, in the 2nd page-column, in the second table-column, in the 11th entry, "Doughlas County" should read "Douglas County".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-6]

Alteration of VOR Federal Airway V-68; CO

Correction

In rule document 88-23868 beginning on page 40408 in the issue of Monday, October 17, 1988, make the following correction:

§ 71.123 [Corrected]

On page 40409, in the first column, in § 71.123, under **V-68 [Amended]**, in the fourth line, "Cortex" should read "Cortez".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 83-AWA-26]

Proposed Department of Energy Prohibited Areas

Correction

In proposed rule document 88-23873 appearing on page 40452 in the issue of Monday, October 17, 1988, make the following correction:

In the second column, under **Withdrawal of ANPRM**, in the fourth line, "83-AWS-26" should read "83-AWA-26".

BILLING CODE 1505-01-D

federal register

Tuesday
November 8, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Progam; Reclamation and Operation Plan; Performance Standards; Roads; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Reclamation and Operation Plan; Performance Standards; Roads

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is amending its rules governing roads at surface and underground mining operations and coal exploration operations. The provisions for roads are to replace rules that previously were suspended. These rules define a road, establish a road classification system, and set forth performance standards that allow regulatory authorities to approve designs tailored to local needs. Also, revised information requirements for the reclamation and operations plan reflect changes in the performance standards for roads.

EFFECTIVE DATE: December 8, 1988.

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SUPPLEMENTARY INFORMATION:

I. Background

Section 701(28)(B) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1201 *et seq.*, defines "surface coal mining operations" to include roads constructed, improved or used for access to the mine site and for haulage. The Act also establishes specific environmental protection performance standards governing roads used for access into and across the mine site during surface coal mining and reclamation operations in section 515(b)(17) and (18). Section 515(b)(17) provides that all surface coal mining and reclamation operations shall "insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property." Section 515(b)(18) provides that all operations shall "refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water." Section 516(b)(10) of the Act imposes these same requirements on roads associated with underground mines with such modifications as are necessary to accommodate the distinct differences between surface and underground mining.

The permanent regulatory program promulgated on March 13, 1979, contained expansive and detailed provisions pertaining to road construction, maintenance and postmining conditions. The rule at 30 CFR 701.5 defined roads for surface mining operations and established a three-tiered road classification system (44 FR 15320, March 13, 1979). Specific provisions for each classification were established at 30 CFR 816.150-176 (44 FR 15416-15421). At the same time, similar requirements for underground mines were established at 30 CFR 817.150-817.176 (44 FR 15442-15447).

The permanent program rules were challenged in a suit filed with the U.S. District Court for the District of Columbia. The court remanded the rules for further consideration because the Secretary had not given adequate notice that he was considering a classification system, *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, slip op. at 32-36 (D.D.C. May 16, 1980). As a result of the court decision, OSMRE suspended its permanent program rules for roads (45 FR 51547, August 4, 1980).

New rules substantially different from the remanded and suspended 1979 rules were proposed on January 4, 1982 (47 FR 56) and April 16, 1982 (47 FR 16592) and were finalized in a rule published May 16, 1983 (48 FR 22110). The 1983 rules, although constituting an extensive expansion of the statutory performance standards, gave regulatory authorities greater flexibility as to the details of road design than did the remanded and suspended 1979 rules. Upon issuance, the 1983 rules were challenged in the U.S. District Court for the District of Columbia. In response to the challenge, the court remanded § 816.150(a) *(In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144, slip op. at 24-28 (D.D.C. Oct. 1, 1984), hereafter *Round γII)*. The court held that OSMRE, in promulgating the classification system in 30 CFR 816.150(a), violated the Administrative Procedure Act (APA), 5 U.S.C. 553, by again not providing adequate notice and opportunity to comment (Slip op. at 28).

Subsequently, in an amended order filed December 10, 1984, the court remanded all of the rules governing roads which were dependent upon the road classification system. OSMRE then suspended those rules as well as the definition of *road* at § 701.5 (50 FR 7278, February 21, 1985). The definition was suspended to give OSMRE an opportunity to reconsider all the provisions in the rules affecting the performance standards for roads.

OSMRE proposed new road rules on November 3, 1987 (52 FR 42258) that were quite similar to the remanded and suspended 1983 rules. Public hearings were scheduled for January 5, 1988, in Washington, DC; Denver, CO; and Knoxville, TN. Since no one requested to testify at these hearings, none were held. The comment period closed on January 12, 1988. OSMRE received 152 individual comments from 23 sources: Ten industry associations, eight State regulatory authorities, two public interest groups, and three Federal agencies. OSMRE also received comments from the Environmental Protection Agency (EPA) after the comment period had closed.

The rules adopted today replace the rules suspended in 1985 (50 FR 7278, February 21, 1985). The minor changes from the proposed rule are identified in the following discussion of the final rule. OSMRE believes, based on analysis of the issues involved, the legislative history of the Act, and the administrative record of this rulemaking, including comments received, that this final rule is a reasonable interpretation and expansion of the provisions of sections 515(b) (17) and (18) of the Act.

OSMRE has not identified any differences between roads for surface and underground mines that would appear to necessitate different regulatory provisions under this rulemaking. Therefore, the final permitting rule applicable to roads for surface mining activities at 30 CFR 780.37 and the final rule for underground mining activities at 30 CFR 784.24 are identical. Similarly, the final performance standards for surface mining activities at 30 CFR 816.150 and 816.151 are identical to the performance standards for underground mining activities at 30 CFR 817.150 and 817.151 respectively. The final permitting rule applicable to support facilities for surface mining activities at 30 CFR 780.38 and the final rule applicable to such facilities for underground mining activities at § 784.30 are also identical. The discussion of the revisions to 30 CFR 780.37, 780.38, 816.150, and 816.151 should be understood to apply also to

the revisions to 30 CFR 784.24, 784.30, 817.150, and 817.151, respectively.

II. Discussion of Final Rule and Comments

This portion of the preamble consists of a description of the rules adopted, changes to the proposal, comments received, and OSMRE's response to comments.

A. General Comments

In addition to receiving comments on specific provisions of the November 3, 1987, proposed rules, OSMRE received several general comments. Two commenters requested time extensions of 30 days to allow adequate time to evaluate the proposed regulations. OSMRE did not accede to the time extension requests; however, OSMRE did give full consideration to all comments received on the proposed rule regardless of whether the comments were timely or late. The proposed rule allowed seventy days for the submission of written comments. OSMRE believes that this amount of time strikes a balance between the needs of reviewers and the agency's responsibility to implement the Act expeditiously through regulations.

One commenter stated that the proposed regulations do not provide consistent guidance to regulatory authorities, or establish minimum national standards for construction, maintenance, or reclamation of roads. The commenter suggested that the proposed regulations be withdrawn, and noted that OSMRE has a mandatory obligation to include standards in the regulations, and that failure to provide these standards is a violation of the Act. The commenter stated that Congress enacted sections 515(b) (10), (17), and (18) with the intent to set "appropriate limits" for road construction, manintenance, and reclamation. The commenter also stated that the 1979 regulations implemented this congressional intent to provide minimum standards, but that adequate specific requirements no longer exist in the proposed regulations. The commenter argued further that, under these regulations. Federal and State agencies, particularly States whose regulations can be "no more stringent than" the Federal program will be unable to set meaningful standards. The commenter also suggested that the proposed regulations be withdrawn pending the outcome of current litigation in the U.S. Court of Appeals for the District of Columbia Circuit where the issue of requiring minimum national standards was under consideration.

OSMRE disagrees. Sections 515(b)(17) and (18) of the Act establish statutory performance standards for roads. In its January 29, 1988, opinion, the Courts of Appeals for the District of Columbia Circuit concurred with the Secretary of the Interior that the Act does not automatically and inevitably require him to "flesh out" statutory performance standards except in limited cases for which such a requirement is clearly established, such as sections 515(b)(13), 516(b)(5) and 517(a) of the Act (*NWF v. Hodel*, 839 F.2nd 694, 734 (DC Cir., 1988), hereafter *NWF v. Hodel*). The court went on to say, "The Secretary is to exercise his informed discretion in deciding what other statutory performance standards bear elucidation or elaboration. In short, we read the Act * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among these concerns is a need to accommodate widely varying local conditions that will not admit of a single nationwide rule." (id. p. 735) Additional material in support of the legal sufficiency of the regulatory approach taken in these rules appears in the Secretary's March 5, 1984 district court brief filed in *Round II at p. 160–166.*

This discussion concerned the Secretary's elimination in 1983 of minimum national environmental standards contained in the 1979 regulations involving: (1) The contemporaneous reclamation of mined lands, (2) the design of earth "terraces" on restored land, and (3) the exemption from the "approximate original contour" requirement of lands featuring unusually thick or thin overburden. The court went on to say, "Under [*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)] the agency must examine the relevant data and articulate a satisfactory explanation for the revised regulation if it is to gain judicial approbation" (id.). The Secretary, therefore, is required to articulate a satisfactory explanation for the final rule and to discuss the specific comments received on the proposed rule. However, the Secretary is not required to justify changes from either the 1979 rule or the 1983 rule since both were invalidated upon appeal.

OSMRE believes this rulemaking is consistent with the above decision of the Court of Appeals for the District of Columbia Circuit and that more specific minimum national standards for construction, maintenance, or reclamation of roads are not necessary. The rules adopted today constitute a considerable expansion and fleshing out of the statutory requirements of section 515(b)(17) and (18) of the Act. However, in accordance with section 101(f) of the Act, the rules take into account regional, physical, biological and climatic diversity among the States by providing State regulatory authorities with the flexibility to incorporate regional and local considerations into their programs.

One commenter noted that the construction of roads and support facilities associated with coal mining and exploration could have serious adverse effects on historic properties. The commenter indicated that, under these rules, regulatory authorities would not adequately identify adverse effects for consideration during permit planning, review, and approval in order to avoid or mitigate such effects. The commenter suggested that a new section be inserted that would require a description of the methods to be used to identify properties included in or eligible to be in the National Register of Historic Places, and the efforts to be taken to prevent or control damage to such properties.

OSMRE's regulations at 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 (52 FR 4244–4263, February 10, 1987) include adequate provisions for the identification of historic properties and consideration of the effects of all surface mining activities on such properties, including the design and construction of roads. To include these provisions in the performance standards for roads, or for any other specific activity related to surface mining, would be redundant.

Two commenters were concerned that, if the roads regulations were finalized, they would be applied retroactively. They suggested that retroactive compliance would be expensive and actually could increase environmental harm due to reconstruction of existing roads. The commenters also suggested that OSMRE clarify that the regulations apply prospectively to operators requesting a permit as of the date that a State adopts these final rules.

OSMRE anticipates that these rules will be applied prospectively by a State after a State has amended its regulatory program to be no less effective than these regulations. That is, a State would require proposed roads included in a permit or permit revision application to comply with the roads regulations adopted by the State pursuant to these Federal regulations. In accordance with 30 CFR 701.11(e), existing roads that meet the performance standards, but not the design requirements, may be exempted from meeting design

requirements by the regulatory authority. Therefore, OSMRE does not anticipate that regulatory authorities will require changes in existing roads if they meet environmental performance standards. Because proposed but not constructed roads included in permits approved prior to a State's adoption of rules pursuant to these regulations would comply with existing performance standards and design requirements, OSMRE believes that extensive reworking of plans would not be required.

One commenter contended that the proposed regulations do nothing for environmental protection other than to restate the existing performance standards contained within the regulatory program. The commenter went on to argue that the proposed regulations create an excessive amount of unnecessary paperwork for industry and the rgulatory authorities. The commenter recommended that the proposed regulations should not become final.

OSMRE disagrees because, even though general performance standards have already been established in 30 CFR Subchapter K—Permanent Program Performance Standards, there is a significant need to have sections specific to the design, construction, reconstruction, improvement, and maintenance of roads. Roads can have a significant environmental impact if they are not properly managed and, with this in mind, OSMRE believes that the requirements outlined in these rules justify the documentation required.

B. Section 701.5 Definitions: Road

The definition of *road* in final § 701.5 is identical to that proposed on November 3, 1987 (52 FR 42265), except that the exemption of "pioneer roads" contained in the proposal has been deleted. The rule defines *road* to mean a surface right-of-way for purposes of travel by land vehicles, including mining equipment, used in surface coal mining and reclamation operations or coal exploration. The term *road* encompasses the entire area and structures within a surface right-of-way that is constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term specifically excludes ramps and routes of travel within the immediate mining area (discussed below) and within excess spoil or coal mine waste disposal areas.

The proposed rule excluded pioneer roads, defined in the proposal as "temporary routes used for constructing access or haul roads," from the definition of *road*. The preamble to the proposed rule explained that pioneer roads provide preliminary access for the construction of permanent access and haul roads or equipment roads and not for mining purposes and that they are either replaced by a primary or ancillary road or reclaimed once they have fulfilled their purpose. The final rule does not retain the exclusion. OSMRE has reviewed the issue and believes that pioneer roads are not a separate, discrete category of roads, but are merely part of the process of constructing primary and ancillary roads. Therefore, pioneer roads are subject to the performance standards of this rule applicable to the construction process but not to those that specify standards applicable to completed primary or ancillary roads.

The term "immediate mining area" refers to the area where coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These other areas include areas where topsoil and overburden are being moved and areas undergoing active reclamation. OSMRE intends the term "immediate mining area" to refer to such areas of frequent surface change. Many areas in a mining operation contain routes of travel that are moved every few days as the mining advances during coal removal and as the operator works in coal waste disposal and spoil areas. These routes have a short life and are not included in the definition of road or subject to the road performance standards, but would be subject to the other performance standards applicable to all surface coal mining and recalamation operations.

Temporary routes within spoil or coal mine waste disposal areas are excluded from the definition of *road* according to an agreement by the Secretary in *Round II* (slip op. at footnote 14). The industry plaintiffs contended and OSMRE agreed that it was not reasonable to require roads within coal spoil and refuse disposal areas to be surfaced with nonacid- or nontoxic-forming substances, since these areas often contain acid- and toxic-forming materials. In addition, all of the surface drainage from these areas is controlled by siltation structures and treatment facilities, where necessary, to mitigate any potential adverse environmental effects.

One commenter suggested revisions to the definitions of *affected area* and *permit area* in 30 CFR 701.5. The commenter wanted existing or proposed roads under the jurisdiction of a Federal land management agency to be excluded from these definitions.

The definitions of *affected area* and *permit area* are not part of this rulemaking. OSMRE believes that a revision to either of these definitions is not necessary. The definition of *road* is clear on its own terms as to which roads are included. For this reason, a reference to *affected area* has not been included. On the specific concern relative to Federal lands roads, neither this definition nor the definition of *affected area* as partially suspended (51 FR 41952, November 20, 1986) is intended to expand or limit the jurisdictional reach of the definition of "surface coal mining operations" contained in section 701(28)(B) of the Act, relative to roads. That jurisdictional reach must be determined on a case-by-case basis by the regulatory authority.

One commenter suggested that OSMRE retain the "within the affected area" phrase in the definition of road to ensure that jurisdiction over existing roads under the control of a Federal land management agency is not transferred to the Secretary or to a State regulatory authority.

As noted above, OSMRE does not agree that adding the phrase "within the affected area" will affect jurisdiction over existing roads.

One commenter requested that OSMRE restate its position with respect to the definition of *affected area* and public roads. Another commenter suggested that the definition of *road* be modified to specifically exclude "public roads." The commenter argued that roads maintained by public funds and located on properties dedicated to public entities are not roads as defined by § 701.5 and, even if the permittee so desired, could not be permitted since ownership is not controlled.

The definition of *affected area* is not a part of this rulemaking, nor is there any reference to *affected area* in the definition of *road*. Similarly, there was no reference to roads in the 1979 definition of *affected area* (44 FR 15317, March 13, 1979). The definition of *affected area* was modified in 1983 as it related to public roads in order to address the practice in some states of operators constructing new access roads and then deeding them to a public entity in order to keep the operation less than two acres in area and thus avoid applicability of the Act for the entire mining operation (48 FR 14814, April 5, 1983). The litigation on this definition (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1980)) also concerned the two-

acre exemption, and the definition of *affected area* was suspended insofar as it might limit jurisdiction over roads covered by the definition of "surface coal mining operations." (51 FR 41952, November 20, 1986) The two-acre exemption has since been eliminated by Congress. Since the definition of *affected area* as partially suspended no longer provides additional guidance as to which roads are included in the definition of "surface coal mining operations," no reference to *affected area* is included in the definition of *road*.

State laws vary widely in their road classification systems. OSMRE is concerned that roads constructed to serve mining operations not avoid compliance with the performance standards by being deeded to public entities. However, it is not OSMRE's intention automatically to extend jurisdiction over roads into the existing public road network. Jurisdiction under the Act and applicability of the performance standards are best determined on a case-by-case basis by the regulatory authority. For this reason, OSMRE did not accept the commenter's suggestion that "public roads" be specifically excluded from the definition of *road*.

Several commenters were concerned about the term "immediate mining area" and expressed views concerning which roads within the mining area should be excluded from the definition of *road*. One noted that roads leading to transfer, processing, or storage areas would be subject to the design and performance standards of § 780.37, yet routes within the immediate mining area are not considered roads under this definition. This commenter was unsure how OSMRE defines "immediate mining area" and argued that, if it is assumed that "immediate mining area" includes any road within the permit area, then the definition would be self-defeating. A second commenter maintained that the use of the term "within the immediate mining area" in the exclusion part of the definition of roads leaves the meaning open to varying interpretations since the word "immediate" is undefined and vague.

One commenter recommended that the definition of *road* exclude those access and haulroads that are located in areas that have been mined and are upstream from sedimentation ponds or other siltation structures that have been designed to contain or treat the runoff from the 10-year, 24-hour precipitation event. Since these roads are in areas that already have been disturbed and all runoff from these areas is controlled, the commenter maintained that it is not necessary that these roads meet the performance standards in § 816.150 and 816.151. Another commenter suggested excluding from the definition roads within the mine area unless a road is to be left as a permanent road and bond release is being sought in accordance with § 800.40. The suggested language stated that roads shall be considered to be within the mine area only where the drainage from the road is commingled and treated with other mine drainage through approved sediment control structures. A fifth commenter suggested that the exclusion be limited to roads which are constructed within the portion of the permit area which is controlled by siltation structures and treatment facilities as required by 30 CFR 816.46. The commenter also suggested that this language would give an exact meaning to the exclusion since the area of the permit required to be controlled by siltation structure and treatment facilities is defined in 30 CFR 816.46. Another commenter agreed with the exclusion, but felt that it would extend to all roads within the mine area since their drainage is otherwise treated with that of the rest of the mine. Another commenter was also concerned that roads within the mine area not frequently changing should not be included in the definition.

OSMRE has not modified the rule in response to these wide-ranging comments. OSMRE intends the term "immediate mining area" to refer to the area of the mine that is subject to frequent surface changes and where the protection required by section 515(b)(17) of the Act, concerning controlling or preventing erosion, siltation, pollution of water, damage to fish and wildlife or their habitat or to public or private property, is provided by other applicable performance standards. The constraints of section 515(b)(18) of the Act would not apply to this area because any serious alterations to the normal flow of water and impact on natural stream beds and drainage channels would have already occurred. The term "immediate mining area" is not intended to encompass the entire permit area and, therefore, would not create a self-defeating definition. OSMRE's view is in part consistent with the view expressed by several of the commenters concerning the exclusion of roads within the permit area for which drainage control is otherwise provided. Since all of the other standards of section 515 of the Act would also necessarily apply to temporary routes not considered roads, the protection required by section 515(b)(17) of the Act would still be achieved. However, OSMRE has retained the concept of frequent changes to ensure that all roads are adequately reclaimed. All routes subject to frequent changes will be obliterated during the mining process. However, routes no longer changing need to be included in the definition of *road* to ensure that they are adequately designed, constructed, maintained and reclaimed.

One commenter maintained that the definition of roads arbitrarily restricts the applicability of the regulations for certain types of road disturbances, and argued that this is a clear contradiction of section 701(28) of the Act. The commenter stated that the deletion of pioneer and construction roads from the roads definition is clearly unlawful. The commenter argued that the principal purpose of pioneer and construction roads is to gain access to the mine site. The commenter also noted that pioneer roads typically disturb virgin areas and can lead to greatly increased sedimentation from a mine site (especially on steep slopes). The commenter asserted that this was a loophole that offers a potential for substantial abuse. The commenter maintained that OSMRE must set out clearly in the record the performance standards that must be met in the design, construction, and reclamation of pioneer roads. Two other commenters were concerned that the term "pioneer road" is not defined in the regulations and may not be universally understood. It was suggested that OSMRE should either define the term "pioneer road" or change the language in the definition of roads.

In response to these comments, the provision excluding pioneer roads from the definition of *road* has been deleted from the rule. As indicated above, OSMRE has re-examined this issue and believes that pioneer roads are not a separate, discrete category of roads, but are part of the process of constructing primary and ancillary roads. As such, pioneer roads are subject to the performance standards applicable to the construction process such as those in § 816.150(b)(1) through (6). The completed primary or ancillary road is subject to the remaining applicable performance standards.

One commenter addressed the term "pioneer roads" in the context of roads for coal exploration. The commenter assumed that most exploration roads are simply unsurfaced, cleared paths that allow access into the area for off-road exploration equipment and would be considered "pioneer roads" and, therefore, not subject to the road regulations. If this assumption is correct,

the commenter would support the current language with respect to coal exploration activities and pioneer roads.

OSMRE has dropped the use of the term "pioneer roads" from the rule to avoid the kind of confusion reflected in the comment. All roads used for coal exploration activities that substantially disturb the natural land surface are subject to the standards of 30 CFR 816.150.

One commenter agreed that temporary routes used for constructing access or haulroads should be excluded from the definition of roads. However, the commenter noted that, just as temporary routes are sometimes used to construct roads, so are temporary routes used to construct any number of structures, such as sediment ponds, stockpiles, and so forth. The commenter maintained that these routes also should be excluded from the definition.

OSMRE has deleted the exclusion for temporary routes that are part of the road construction process. Temporary routes used to construct other types of structures are, by definition, ancillary roads.

One commenter suggested that the rule state that only those roads used exclusively for the sole purpose of surface coal mining reclamation and exploration operations, should be included in the definition. The commenter also suggested that the definition should state that only those access and haulroads constructed, used, reconstructed, improved, *and* maintained are included. The commenter argued that this language would clearly show that the combination of these activities is necessary in order for a road to be considered a "road" under the definition.

OSMRE did not accept these suggestions, which are intended to limit the scope of the definition of *road*, because to do so would be inconsistent with the requirements of section 515(b)(17) of the Act, which requires control or prevention of environmental harm from the construction, maintenance or postmining conditions of access roads into and across the site of operations.

One commenter requested that OSMRE clarify the definition of *road* with respect to roads to and from transfer, processing, or storage areas. The commenter maintained that all roads from these areas would also fall under the definition of *road*.

OSMRE agrees that roads to and from transfer, processing, or storage areas are included in this definition, if these roads fall within the definition of "surface coal mining operations." This will have to be determined on a case-by-case basis consistent with the guidance previously stated in this preamble.

C. Sections 780.37/784.24 Road Systems

Final § 780.37 is the same as the proposed rule, except for some minor wording changes discussed below, and contains permit application requirements which specify the plans and drawings that an applicant is required to submit for each road within a proposed permit area. The section also discusses certification of primary roads and the establishment of standard design plans by the regulatory authority.

One commenter suggested that the requirements of § 780.37 would accomplish little more than additional excessive paperwork for industry and the regulatory authority because environmental protection could be accomplished by requiring roads to meet the performance standards of the existing regulations.

OSMRE believes that the requirements of § 780.37 are the minimum necessary to provide the regulatory authority with the permit information needed to find that the performance standards promulgated with this rule will be met so that a permit may be issued.

Sections 780.37(a)/784.24(a) Plans and Drawings

Final § 780.37(a) requires the permit application to include plans and drawings for each road to be constructed, used, or maintained within the proposed permit area. OSMRE believes that the information in the plans and drawings enables the regulatory authority to assess the impacts resulting from any road that would be constructed or used as part of the surface mining operation, and determine whether the operation and reclamation plan would be effective in mitigating as much of the cumulative impacts on the environment as possible, consistent with the purpose of the Act.

Final § 780.37(a)(1) requires the applicant to submit a map, and as appropriate, cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures. OSMRE expects that the amount of detail submitted by the applicant under this section will be appropriate to the classification of the road and to the extent of the projected impact from the specific feature. For example, less detail will be required for an ancillary road than for a primary road, for which the drawings and specifications would be quite detailed.

Final section (a)(2) requires drawings and specifications of each proposed road that will be located in the channel of an intermittent or perennial stream to give the regulatory authority the information necessary to approve the road, consistent with the performance standard in § 816.150(d)(1), which was promulgated pursuant to section 515(b)(18) of the Act.

Final § 780.37(a)(3) requires that the drawings and specifications for each proposed ford of perennial or intermittent streams that will be used as a temporary route provide the regulatory authority with sufficient information to review the stream ford and decide whether to approve it, consistent with the performance standard in § 816.151(c)(2). A minor wording change, discussed below, was made in the final rule to make the language in § 780.37(a)(3) consistent with the language in § 816.151(c)(2).

Final § 780.37(a)(4) requires a description of measures that the applicant must take to obtain the approval of the regulatory authority for alteration or relocation of a natural stream channel, consistent with the performance standard in proposed § 816.151(d)(5). A minor wording change, discussed below, was made in the final rule to make the language in § 780.37(a)(4) consistent with the languag in § 816.151(d)(5).

Final § 780.37(a)(5) requires drawings and specifications for each low-water crossing of perennial or intermittent streams, to enable the regulatory authority to maximize the protection of the stream in accordance with the performance standard in § 816.151(d)(6). A low-water crossing resembles a bridge in that water flows under the structure at normal stream level, but high water goes over the structure during storm or flood events. A minor word change, discussed below, was made in the final rule to make the language in § 780.37(a)(5) consistent with the language in § 816.151(d)(6).

Final § 780.37(a)(6) requires information on the applicant's plans to remove and reclaim each road, and the schedule to be followed for road reclamation, to ensure consistency with the performance standards. This information will not be required for a road that is proposed to be retained for use under an approved postmining land use.

One commenter supported the new language for permit information requirements for roads and suggested that § 780.37(a) provides needed

information for the regulatory authorities to make an informed decision where an operator proposes to place roads in stream courses or ford streambeds. Another commenter suggested a language change for § 780.37 and other similar sections that reference the preparation of plans, drawings, or maps. The commenter suggested that each section could include a sentence noting that these requirements may be accomplished through the use of photogrammetric methods for aerial surveys and mapping.

While these methods may be appropriate to fulfill some of the plans, drawings, and map requirements in the paragraph and other sections, OSMRE does not believe that photogrammetric methods need to be specifically referenced in a national rule. The States are free to specify the types of plans, drawings and maps that will be acceptable based on an assessment of the quality, reliability and availability of data provided by various methods of data collection and presentation.

One commenter maintained that the requirements in § 780.37(a) are redundant and should be deleted because they are essentially found elsewhere in the regulations. The commenter noted that 30 CFR 816.57 prohibits any activity within 100 feet of an intermittent or perennial stream unless that activity is approved by the regulatory authority and diversions of perennial and intermittent streams, for any reason (including roads) are specifically addressed by 30 CFR 816.43(b). The commenter argued further that plans for diversions are required to be included in the permit by 30 CFR 780.29, and the effects of all proposed activities on hydrology must be addressed in the permit under 30 CFR 780.21(f).

OSMRE does not agree that § 780.37(a) is redundant. It contains the requirement that the permit application include plans, drawings, maps, descrptions, and other information to enable the regulatory authority specifically to assess the impacts resulting from roads that would be constructed or used as part of the surface mining operation relative to the specific performance standards applicable to roads. These information requirements will enable the regulatory authority to determine whether the operation and reclamation plan will be effective in mitigating the impacts specific to roads to ensure compliance with those standards.

One commenter asserted that there was insufficient protection for stream courses and suggested that OSMRE set minimum standards for determining allowable practices.

OSMRE does not agree that further minimum standards are appropriate in a national rule, because such standards would fail to take into account regional differences in the hydrologic characteristics of streams. Further, OSMRE believes that the information requirements of § 780.37 provide the information necessary under the Act for regulatory authorities to use in making permit decisions concerning the location of roads in stream channels. Also, the performance standards for roads found in §§ 816.150 and 816.151, along with the other general performance standards found in "Subchapter K-Permanent Program Performance Standards," provide sufficient protection for stream courses.

Two commenters suggested that the technology used in § 780.37(a) (2) through (5) should correspond to the terminology used in the performance standards referenced by each paragraph.

OSMRE agrees and has made the following changes to the rule. In § 780.37(a)(3), "each proposed stream ford" is replaced by "each proposed ford of perennial or intermittent streams" to correspond to the language in 30 CFR 816.151(c)(2). In § 780.37(a)(4), "natural drainageway" is replaced by "natural stream channel" to correspond to the langauge in 30 CFR 816.151(d)(5). In § 780.37(a)(5),"each low-water crossing" is replaced by "each low-water crossing of perennial or intermittent stream channels" to correspond to the language in 30 CFR 816.151(d)(6). Identical changes were made in § 784.24(a)(3) to correspond to 30 CFR 817.151(c)(2), in § 784.24(a)(4) to correspond to 30 CFR 817.151(d)(5), and in § 784.24(a)(5) to correspond to 30 CFR 817.151(d)(6).

Three commenters maintained that the requirement in § 780.37(a) to prepare plans is burdensome, does not reflect the dynamic nature of a mining operation, and does not produce a commensurate gain in environmental protection. The commenters suggested language changes and alternate concepts that included requiring only typical design plans, plans as appropriate, or only details for primary roads.

OSMRE does not agree with the commenters. The information required for plans and drawings in § 780.37(a) is necessary for the regulatory authority to assess the impacts expected from roads associated with a permit application. This evaluation of the efficacy of the proposed reclamation and operations plan in mitigating impacts on the environment is consistent with the purposes of the Act. However, OSMRE expects that the amount of detail submitted in a permit application will be appropriate to the classification of the road and its projected impacts.

One commenter suggested that, where stream crossings are proposed, detailed plans for such crossings should be submitted so that the regulatory authority can evaluate the impacts of their construction.

OSMRE agrees that this could be helpful to the regulatory authority, and the regulatory authority has the flexibility to require this type of information. Section 780.37 requires the applicant to submit plans and drawings for each road, including a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures.

Four commenters suggested that the requirement in § 780.37(a)(6) to describe road removal and reclamation and provide a schedule for the work should be deleted or clarified to ensure that the detail required for the schedule would be commensurate with the dynamic nature of mining operations. The commenters noted that, due to the variable nature of mining operations, a schedule for road removal and reclamation would be speculative at best.

OSMRE recognizes the potential for changes in the road removal and reclamation plan and schedule as mining progresses. However, this potential for change, which is inherent in all plans and schedules, does not obviate the need to have this best-plan information available to the regulatory authority during permit review to ensure consistency with the performance standards found in 30 CFR 816.150(f).

Sections 780.37(b)/784.24(b) Primary Road Certification

This provision is identical to the proposed rule and requires that the plans and drawings for each primary road be prepared by or under the direction of a qualified registered professional engineer experienced in the design and construction of roads. It also requires that the engineer certify that the design meets the performance standards of 30 CFR Chapter VII, current, prudent engineering practices, and any design criteria estblished by the regulatory authority. The phase "current, prudent engineering practices" includes those practices well-established by engineering principles

and widely recognized by experts with experience in the subject.

Section 780.37(b) also allows design and certification by a qualified registered professional land surveyor experienced in the design and construction of roads in any State which authorizes land surveyors to certify the design of primary roads. This provision is based on the November 4, 1983, amendments to the Act which authorize land surveyors to prepare and certify cross sections, maps, and plans (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)). The amendment provides that "not withstanding section 507(b)(14) of the Surface Mining and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps, or plans of land to be affected by an application for surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." Before a land surveyor could certify the design of a primary road under this rule, State law also would have to grant corresponding authority.

One commenter indicated support for § 780.37(b), which reflects the 1983 amendment to the Act initiated by the surveying profession authorizing a qualified registered professional land surveyor to design and certify plans and drawings for each primary road.

Two comments maintained that, at the time of permit application preparation, an operator may not have determined the precise location and design of a road or may not have sufficient site-specific field information to certify the plans and drawings for a primary road. They suggested that OSMRE change the language in § 780.37(b) to allow for the submission of detailed design and plans prior to construction, instead of requiring submission with the permit application. They noted that this would reduce the likelihood of permit modifications later during the duration of the operation. In a related comment, it was suggested that § 780.37 contain a provision requiring submission to the regulatory authority by the permittee of updated plans and drawings to account for changes in the location or design of roads.

OSMRE did not accept the suggestion that the final rule allow submission of detailed design and plans at the time of road construction. OSMRE believes that in order to adequately assess the impacts of the roads planned for an operation, the regulatory authority needs the information required in § 780.37(b) during the initial permit review. This is particularly important for primary roads due to the potential for environmental impact associated with their frequency or length of usage. Also, OSMRE anticipates that sufficient information will be present in the permit application package to ensure compliance with the appropriate performance standards. OSMRE did not accept the suggestion that the final rule require the submission of updated plans and drawings to account for changes in the location or design of roads. If changes occur, they must be incorporated into the permit by the normal permit revision process established in 30 CFR Part 774.

One commenter did not agree with the language that authorizes land surveyors to certify plans and drawings for roads. The commenter maintained that the design of roads was outside the field of expertise of land surveyors.

OSMRE recognizes that not all land surveyors have adequate expertise to certify plans and drawings for road designs, and therefore requires that the registered professional land surveyor be "qualified and experienced in the design and construction of roads." This requirement, along with the requirement for State authorization of surveyor certification of road design, is sufficient to ensure that certifying land surveyors will have appropriate expertise to certfiy plans and drawings for roads.

One commenter argued that the certification requirement in § 780.37(b) was unnecessary and should be deleted. The commenter noted that since the roads were part of the permit area, they were already completed by a qualified engineer or land surveyor and, therefore, must comply with the approved mining plan and performance standards. The commenter argued further that requiring post-construction certification of roads creates additional unnecessary paperwork with no net environmental protection.

OSMRE does not agree with the commenter and believes the design certification requirement for primary roads is necessary because the potential for environmental impacts from primary roads can be significant. By requiring certification that the design of primary roads meets the requirements of the Act, the potential problems associated with design of primary roads will be minimized.

Two commenters suggested that geologists be authorized to certify plans and drawings for primary roads. They noted that the November 4, 1983, amendment to the Act allows cross sections, maps, or plans of land to be affected by an application for surface mining and reclamation permit to be prepared by or under the direction of a qualified registered professional geologist.

OSMRE did not accept this suggestion because the existing authority of geologists is not affected by this rulemaking; therefore, their authority for preparing and certifying cross sections, maps and plans has not changed since 1985 (50 FR 16195, April 24, 1985).

One commenter suggested that ancillary roads should also be designed and certified by a qualified professional to ensure proper drainage control and stability of road embankments.

OSMRE did not accept this suggestion. It is not necessary to require design certification of ancillary roads because usage of ancillary roads has smaller potential for adverse environmental impact than usage of primary roads. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. See the discussion of the road classification system in the preamble to final § 816.150(a)(1).

Sections 780.37(c)/784.24(c) Standard Design Plans

Final § 780.37(c) is identical to the proposed rule and allows the regulatory authority to establish engineering design standards for primary roads through the State program approval process, in lieu of the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3, for all primary road embankments. Such standards must be no less effective than the minimum static safety factor of 1.3. Suitable engineering design standards are those that are accepted in the engineering community as the basis for constructing stable roads, and are known to assure proper performance through testing and past practice. This provision enables the regulatory authority and the operator to save time and effort during the design and review of road plans, and also ensures protection of the environment through the application of standards that have proven effective for the conditions prevalent in each State.

Three commenters supported proposed § 780.37(c). They noted that, by allowing the regulatory authority to establish or use engineering design standards instead of engineering tests, § 780.37(c) reinforces the Act's finding in section 101(f) that, because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining

and reclamation operations should rest with the States.

D. Sections 780.38/784.30 Support Facilities

Final § 780.38 addresses the specific permit application requirements for all support facilities covered by § 816.181 of the performance standards. A permit applicant must submit a description, plans and drawings for each facility to be constructed, used or maintained within the proposed permit area. The plans and drawings include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.181 for each facility. The final rule is adopted as proposed.

This rule expands new § 780.38 to cover support facilities in general. Although existing 30 CFR Part 780 contains a number of requirements applicable to support facilities, the existing rules do not contain a general requirement that a permit application include plans and drawings for support facilities that would be sufficient to demonstrate compliance with § 816.181. To remedy this deficiency, § 780.38 applies to all support facilities in addition to the conveyors and rail systems covered by previous § 780.37.

One commenter objected to proposed § 780.38 because it appeared to the commenter to consider roads associated with support facilities to be distinct from roads regulated by §§ 816.150 and 816.151. The commenter stated that the preamble provided no justification for distinguishing roads associated with support facilities as distinct from roads associated with the surface coal mining operation since the same equipment uses both roads. For this reason, the commenter continued, all roads should be designed and maintained under a uniform set of performance standards and reclaimed to permanent program standards.

OSMRE agrees that this rule should not distinguish roads associated with support facilities from other roads. The definition of *road* in final §701.5 includes all roads that are used in surface coal mining and reclamation operation without differentiating between roads for support facilities and roads for coal mining operations. Section 780.37 as well as the performance standards in §§ 816.150 and 151 apply to all roads at the coal mining operation including those associated with support facilities. Therefore, all roads must be designed and maintained under a uniform set of performance standards and reclaimed to permanent program standards.

The same commenter also stated that proposed § 780.38 appeared to remove support facilities, including conveyors and rail systems, from the permit information requirements and permanent program performance standards that were applicable for these facilities under the 1983 rule and would be applicable to roads under the proposed rule. The commenter stated that § 780.38 must be substantially rewritten to ensure that conveyors and rail systems in particular, and all support facilities in general, meet all permanent program application and performance standard requirements.

OSMRE disagrees with the commenter's assessment of the purpose and effect of this final rule. The final rule does not change or affect in any way the performance standards for support facilities. The rule brings the format of the permit information requirements into harmony with the format of the performance by placing the permit information requirements and performance standards for roads and support facilities in separate, parallel sections.

OSMRE also disagrees that § 780.38 should be rewritten to indicate more clearly the performance standards applicable to support facilities. In fact, § 780.38 certifies the performance standards applicable to support facilities (including rail systems and conveyors) by grouping the permit information requirements and the associated performance standard reference in the same place. Previously, the permit applicant would have had to search through § 780.37 to determine the requirements applicable just to roads and those applicable to both support facilities and roads.

One commenter stated that the title of § 780.38 should be "Other Transportation Facilities" since that is the section's topic of discussion.

OSMRE did not accept this comment. Since the permitting requirements established by this section cover all support facilities, and parallel and reference the performance standards in § 816.181, concerning support facilities, the title is appropriate.

Two commenters requested that § 780.38 be withdrawn from this rulemaking because OSMRE has not defined "support facilities," and it is therefore premature for OSMRE to adopt this rule. They also stated that the proposal substantially changes the scope of this rule from roads and conveyors to all facilities. They stated that it was not possible to comment on § 780.38 without any guidance on what constitutes a support facility until it is defined in the rules. Finally, the commenters suggested that States are capable of determining those facilities related to coal mining that should be regulated under their regulatory programs and establishing appropriate performance standards as necessary.

OSMRE agrees in part and disagrees in part. First, effective July 11, 1988, OSMRE reinstated the suspended definition of *support facilities* (53 FR 21764, June 9, 1988) pursuant to the January 29, 1988 decision of the U.S. Court of Appeals for the District of Columbia Circuit (*NWF* v. *Hodel*). However, OSMRE agrees that State regulatory authorities are capable of identifying facilities that should be subject to the provisions of the Act without having a definition of support facilities in the Federal regulations. Therefore, OSMRE has proposed to delete the recently reinstated definition of *support facilities* from 30 CFR 701.5 (53 FR 23522, June 22, 1988). However, whether there is or is not a Federal definition of *support facilities* is irrelevant to this rule, the purpose of which is to specify more clearly the link between permit information requirements for such facilities and the applicable performance standards, which are not part of this rulemaking. The information required in § 780.38 is needed to demonstrate compliance by each facility with 30 CFR 816.181.

One commenter stated that § 780.38 was unnecessary because sufficient information is authorized in the existing regulations to show the location and dimensions of all support areas within the permit boundary; therefore, the proposed rule does little more than reinforce the existing regulations.

OSMRE disagrees that § 780.38 is unnecessary because although existing 30 CFR Part 780 contains a number of requirements which may be applicable to support facilities, the existing rules do not contain a specific requirement that a permit application include plans and drawings for support facilities that would be sufficient to demonstrate compliance with § 816.181. By specifying the degree of detail that is needed in each permit application, § 780.38 provides clear direction to the applicant.

E. Section 815.15(b) Road Standards for Coal Exploration

Final § 815.15(b) requires all roads or other transportation facilities used for coal exploration to comply with the applicable provisions of 30 CFR 816.150, 816.180, and 816.181. The final rule is unchanged from the proposal.

OSMRE believes that it is not necessary for roads used for coal

exploration to meet the performance standards of § 816.151 for primary roads because the amount of coal or spoil transported during coal exploration operations is relatively small. OSMRE believes that the performance standards of § 816.150 provide sufficient protection for the environment during coal exploration. Under section 512(a) of the Act, 30 CFR 815.15 applies only to "coal exploration activities which substantially disturb the natural land surface." Thus, a road must comply with the applicale provisions of 30 CFR 816.150 only to the extent that the coal exploration activities substantially disturb the land where the road is located. OSMRE has defined the term *substantially disturb* in 30 CFR 701.5.

One commenter supported the language in § 815.15(b) because, in the commenter's opinion, it allows the regulatory authority some flexibility in deciding if a coal exploration road should be designed and constructed to primary road standards. The commenter stated that, since these roads are generally used for only a short time during coal exploration activities, especially when 250 tons or less of coal is removed, the design and construction of a road to such stringent standards is not necessary.

OSMRE disagrees with the commenter's assessment of the applicability of the rule. The rules adopted today do not apply the primary road performance standards in § 816.151 to coal exploration activities. Furthermore, the coal exploration regulations do not require prior approval of roads when 250 tons or less of coal is to be removed.

Another commenter stated that OSMRE has a responsibility to set national standards for roads associated with coal exploration, regardless of the amount of coal removed from the site. The commenter suggested that haulroads for coal exploration in steep-slope areas have the potential for environmental damage and require standards to ensure that environmental damage caused by construction and use of these roads is minimized. The commenter also stated that OSMRE has no basis for the arugment that specific design standards only apply to primary roads because OSMRE has a statutory responsibility to provide meaningful national standards for all surface coal mining and reclamation operations. The commenter concluded that meaningful national standards for roads associated with coal exploration sites should be adopted in the final rule.

OSMRE has included a full discussion on the necessity of promulgating specific design standards for mining roads in the discussion of § 816.150. Neither section 512 nor section 515 of the Act requires the establishement of design standards for coal exploration roads. The requirement in § 816.150(c) that the road shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, and any necessary design criteria established by the regulatory authority will provide adequate environmental protection to the area of coal exploration activities. Enforcement of these provisions will provide the necessary protection in steep-slope areas.

One commenter recommended that the term *substantially disturbed* in 30 CFR 701.5 be changed to exclude the construction of a road for coal exploration activities proposing to remove less than 250 tons of coal.

OSMRE does not agree that the construction of a road for such coal exploration activities could not involve "substantial disturbance." The determination of when "substantial disturbance" has occurred must be made on a site-by-site basis. OSMRE does not believe the routine maintenance of an existing road used for coal exploration is a substantial disturbance requiring the road to be reclaimed in accordance with the preformance standards of section 515 of the Act. To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may need to blade the road surface, replace some culverts, or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road. Further, in some cases coal exploration activities are conducted without roads and in such a manner that the activities do not substantially disturb the natural land surface.

F. Sections 816.150/817.150 Roads: General

Final § 816.150 applies to all roads as defined by 30 CFR 701.5. It includes a road classification system, performance standards, design and construction limits, provision for design criteria, and provisions on road location, maintenance, and reclamation. Section 816.150 is identical to the proposed rule except for a clarifying change to § 816.150(b)(1) adopted at the request of EPA and minor changes to § 816.150(d)(1) and (f).

Sections 816.150(a)/817.150(a) Road Classification System

Final § 816.150(a) is identical to the proposed rule and establishes classifications for all mine roads as either primary or ancillary. Primary roads are defined as any roads(1) used for transporting coal or spoil, (2) frequently used for access or other purposes for a period in excess of six months, or (3) to be retained for an approved postmining land use. An ancillary road is any road not classified as a primary road. OSMRE believes that the potential for environmental harm associated with the two types of roads is sufficiently different to require a two-tiered classification system. Roads that are heavily travelled over a long period of time; used by large, heavy vehicles; or that have a potential for spillage have a greater potential for environmental harm than roads that are used infrequently by small, light vehicles or for short periods of time. This concept is supported by OSMRE's experience and observations over the past ten years operating a regulatory program.

Each of the factors that distinguish primary roads from ancillary roads is related to an increased potential for environmental harm. Roads used for haulage of coal, overburden, spoil, etc. are classified as primary roads under the final rules. These roads are typically used by large, heavy vehicles. In order to accommodate such vehicles, the road must be wide, generaly involving two lanes of traffic, and its surface must be capable of supporting the weight of the traffic. A wide road involves much more earthmoving in its construction and exposes more surface area, increasing the potential for erosion. On heavily travelled roads, provision must be made for vehicles to pass one another safely. The design manuals recommend wider lanes where the ability of vehicles to pass one another is a concern. See Kaufman and Ault, pp. 30–33. On less travelled roads, a single lane would suffice. The increased potential for environmental harm associated with frequently travelled roads derives from the greater surface area exposed and the greater dust entrainment associated with larger vehicles and the greater volume of traffic. Roads with a higher weight bearing capacity require a thicker subbase, so that more material must be excavated, placed and compacted in constructing the road.

Design manuals recommend that roads used by large haulage vehicles, for example, in the 100,000–200,000 pound range, minimize the severity of road grades. See Kaufman and Ault, pp. 8–11.

Building roads to accommodate heavier vehicles, therefore, often requires substantial cut and fill work to limit maximum and sustained grades in addition to providing adequate width for wide vehicles to safely pass. Also, since there is a certain amount of cargo spillage associated with haulage roads, the potential for erosion, siltation or damage to property or wildlife habitat is greater for such primary roads due to loose coal, coal waste or spoil on the road surface. Roads not used for haulage will not typically generate this potential problem.

Under the classification system, primary roads also include roads frequently used for a period in excess of six months. This factor is included due to the increased risk of environmental harm associated with heavy traffic over long periods of time. Duration of road use is also an important predictor of potential environmental harm. The longer a road exists, the greater potential for slips or grade failures as well as other impacts previously mentioned. In OSMRE's experience, the potential for erosion and siltation as well as road grade failures is quite seasonal, normally occurring in early spring. Especially in the Eastern U.S., the increased precipitation associated with this period combined with frequent freezing and thawing tends to degrade road beds as well as the surface. However, such problems are frequently not evident in the first season. Moreover, roads used less than six months will frequently not even be in place during this season. Therefore, OSMRE believes, due to the increased risk of environmental harm, that longer term roads must be subject to the more stringent primary road design and performance standards. OSMRE strongly believes that differentiating between potentially greater or lesser environmental impacts in developing regulatory requirements is fully consistent with the requirement in section 102 of the Act to establish a program to protect society and the environment and to strike a balance between protection of the environment and the nation's need for coal. OSMRE is basing these road provisions, in part, on ten years of experience enforcing the surface mining regulatory program. OSMRE believes that these standards are both necessary and adequate to achieve the purposes of the Act.

Ancillary roads are all roads not designated as primary. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. Consequently, the potential severity and risk of harm from use by such vehicles is smaller. OSMRE has not identified specific types of roads in the rule as ancillary because it would not be possible to make an all-inclusive list. Examples of ancillary roads are those which provide access to air shafts, sediment ponds, and locations for hydrologic sampling, equipment maintenance, monitoring, or other similar uses.

One commenter supported the concept of two classifications for roads as well as the handling of performance standards in general terms. The commenter noted that this gives the regulatory authority more discretion in managing permitting and enforcement programs.

One commenter suggested that all roads outside the area controlled by siltation structures and treatment facilities be considered primary roads.

OSMRE did not accept this suggestion because it is unnecessarily rigid. Such a system for designating primary roads would entail substantial design, construction and maintenance costs without, in many cases, a concomitant reduction in potential environmental harm.

Some commenters were concerned that the proposed two-tiered system was overly simplistic, especially with resepct to limited use roads that exist for extended periods of time. The commenters felt that such roads would be inappropriately considered primary roads.

OSMRE does not agree that the two-tiered system is overly simplistic, nor does it agree that a "simple" system is necessarily inferior to a "complex" one. The final rule balances environmental protection, safety and road stability against design, construction and maintenance costs while providing the flexibility to address a multitude of varying site conditions. Under the final rule, infrequently used acess roads that will be in existence for an extended period of time will be considered ancillary roads.

Numerous commenters voiced their concerns about how the elements of the definition of primary road in § 816.150(a)(2) would be interpreted. Regarding the criterion in § 816.150(a)(2)(i) that roads used for transporting coal or spoil are primary roads, there was concern that a bona fide ancillary road would automatically be classified as a primary road if a pickup truck loaded with coal used the road.

OSMRE did not modify the regulation in response to this concern because it is confident that such situations rarely, if ever, arise and that regulatory authorities will use reasoned judgement in applying the definition to achieve its intended purpose. Roads used for coal and spoil transportation must be considered primary roads because of the generally large trucks used, the high frequency of trips, the potential for spillage of coal or spoil onto the road surface, and the fact that coal and spoil transport occurs throughout the life of the operation.

Concerning the frequency of use criterion contained in § 816.150(a)(2)(ii), a commenter suggested that the word "frequently" be dropped because some infrequently used road could cause more environmental harm than coal haulroads. It was also suggested that frequency be defined.

OSMRE did not drop the frequency element from the definition of primary road because it believes that frequency of use is a key predictor, along with duration of use, of potential environmental harm. OSMRE did not add a definition of "frequently used" to the final rule because it is not possible or advisable in a national rule to devise a definition that will fairly address all sets of circumstances. Whether a road is "frequently used" is a determination that should be made at ground level on a case-by-case basis taking into account the probable environmental consequences of the anticipated level of use and the types of vehicles expected to use the road. As an example, OSMRE considers that a road used only once or twice each day, or once or twice each shift, for access to a structure housing a fan or ventilator (fan house) for the purpose of monitoring and/or maintenance would not be a "frequently used" road.

Concerning the duration of use criterion in § 816.150(a)(2)(ii), it was suggested that the six-month period should be deleted and that the primary road definition should better reflect the type of vehicular use and primary purpose of the road. It was argued further that access and service roads used in excess is six months would be classified as primary roads thus burdening the operator with unnecessary design and performance requirements.

The concern that the primary road definition should better reflect the type of vehicular use and primary purpose of the road is addressed in the previous discussion explaining the basis for the road classification system. As to which roads are classified as primary, the commenter may have misunderstood the proposed regulation. Duration of use is a key predictor of a road's potential for environmental harm. It is generally

recognized that the longer a road is used, the greater the potential for stability problems and erosion. However, an infrequently used road of more than six months duration (which is not used to haul coal or spoil, and which will not be retained for postmining land use) is unlikely to cause significant environmental harm and, thus, is not classified as a primary road. The six-month limit establishes a reasonable balance between long- and short-term use.

Three commenters suggested that OSMRE revise the road classification system in § 816.150(a)(2)(iii) as it relates to roads that will be retained for an approved postmining land use. The commenters argued that retaining a road for a approved postmining land use should not be a determining factor in classifying the road because to do so would subject the road to performance standards that could be unrelated to the use of the road during the mining operation. They felt that the classification should be determined solely by the purpose and frequency of use of the road during mining. The same commenters were also concerned about how changes in the status of a road would be handled, e.g. a road classified as ancillary during the mining operation becomes a primary road when the operator retains the road after mining and reclamation is completed.

OSMRE did not accept the commenters' arguments and continues to believe that roads which are to be retained for an approved postmining land use should be considered primary roads and be subject to the associated performance standards. OSMRE bases this belief on the fact that after final bond release, protection from the future environmental consequences of road use and maintenance under the Act ceases. The operator has no responsibility for subsequent adverse environmental impacts related to the road's use and maintenance. In order to provide a reasonable assurance of environmental protection after the site has been reclaimed, and in the absence of an operator, OSMRE believes that postmining roads must be designed and constructed in compliance with the more stringent primary road standards. This will ensure, as far as possible, that the location, design, construction and maintenance of the road during mining operations will have minimum adverse impacts after reclamation. Concerning changes in the classification of a road, OSMRE believes that the regulatory authority must approve such changes based on the road's compliance with all standards applicable to the road.

One commenter suggested that performance standards are unnecessary because primary roads are required as part of any operation, and the regulations are only a duplication of existing performance standards.

OSMRE does not agree. These regulations and performance standards specific to roads are necessary to insure that all roads are properly classified, that potential environmental impact of the roads are adequately evaluated and that roads are located, designed, constructed, reconstructed, maintained, and reclaimed so as to minimize their environmental impacts.

One commenter maintained that some of the requirements for primary roads would be burdensome to small operators. The commenter noted that at small operations, the equipment used to transport the coal may only include small trucks of limited capacity. The commenter suggested that some allowance or exception should be made whereby use of a road to transport coal does not automatically cause it to be a primary road.

OSMRE understands the commenter's concern for small operators. However, as discussed above, OSMRE has concluded that roads used for transporting coal or spoil have a potential for environmental damage regardless of whether their use is frequent or long-term. Therefore, roads used for transporting coal or spoil have been included in the definition of primary roads and are subject to more stringent performance standards. It should be noted that OSMRE expects that road design will reflect the anticipated road duration and usage.

One commenter indicated that the term "ancillary road" requires a better definition. The commenter was concerned because of the lack of any permitting or reclamation requirements for ancillary roads.

OSMRE disagrees that "ancillary road" is poorly defined. Taken together, the definition of *road* at § 701.5 and the definition of primary road at § 816.150(a)(2) delineate ancillary road with a degree of specificity appropriate to a national rule given the variety of roads associated with mining operations. The permit information and reclamation requirements specifically associated with ancillary roads are found in §§ 780.37 and 816.150, respectively.

One commenter recommended that the classification system be changed to account for the diversity in service life and uses of mine roads. This commenter also suggested that designs should be prepared by qualified professionals.

OSMRE agrees that some form of categorization of roads is necessary from both the environmental and economic points of view due to the diversity of road uses and types associated with mining operations, but did not make any change in the final rule because the road classification system being adopted today explicitly differentiates between the two types of roads on the basis of purpose and frequency of use. Further, § 780.37 requires the plans and drawings for each primary road to be prepared by, or under the direction of, qualified professionals. Because the risk of environmental harm from ancillary roads is less than that from primary roads, the added expense for design and construction certification by a registered professional is not appropriate.

One commenter felt that § 816.150(a) should explicitly exclude public roads.

OSMRE disagrees. The applicability of these standards to public roads is discussed elsewhere in this preamble.

One commenter objected to the distinctions made between primary and ancillary roads for determining which roads have to meet specific performance standards. The commenter maintained that OSMRE has failed to meet the mandate of the Act by not establishing specific design criteria for all roads including ancillary roads, because of the potential for environmental damage. The commenter did not accept OSMRE's position that ancillary roads do not cause as much damage as primary roads. The commenter maintained that OSMRE is using the classification system to allow an exception from the statutory standards for ancillary roads. The commenter was particularly concerned with the potential environmental damage caused by ancillary roads in steep-slope areas.

Another commenter questioned the need to classify all mine roads as either primary or ancillary on the basis of purpose and frequency of use. The commenter argued that all roads, regardless of their intended purpose or frequency of use, retain similar potential for environmental damage if they are not designed, constructed, maintained or reclaimed properly. The commenter maintained that the additional requirements in § 816.151 are essentially the best management practices that should apply to all roads in order to achieve the performance standards contained in § 816.150(b). The commenter contended that the two-tiered classification system would result in less attention being paid to ancillary roads, which are more numerous in a mining operation than primary roads.

OSMRE believes that the road classification system established in § 816.150(a) appropriately distinguishes between primary roads, which need more detailed consideration in their design, construction, maintenance, and reclamation; and ancillary roads, which are likely to be small and would generally not be used for carrying heavy loads. The basis for the distinction is that the potential severity and risk of harm associated with smaller, less used (ancillary) roads is considerably less than that associated with larger, busier (primary) roads. Ancillary roads are not exempted from performance standards; all roads, including ancillary roads, must comply with the standards of § 816.150, which is an expansion of the statutory standards contained in section 515(b)(17) and (18) of the Act.

Sections 816.150(b)/817(b) Performance Standards

Final § 816.150(b) establishes performance standards that operators must meet when locating, designing constructing, reconstructing, using, maintaining, and reclaiming roads associated with surface coal mining operations as defined by 30 CFR 701.5. Section 816.150(b) is identical to the proposed rule except for a clarifying change to § 816.150(b)(1) adopted at the request of EPA. The change is discussed below in the responses to comments.

The performance standard in section (b)(1) requires the control or prevention of erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occuring on the other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

The standards in sections (b) (2) through (7) require an operator to control or prevent damage to fish, wildlife, or their habitat and related environmental values; control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area; neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters; refrain from seriously altering the normal flow of water in streambeds or drainage channels; prevent or control damage to public or private property, including the prevention or mitigation of adverse effects to lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers system, including designated study rivers, and National Recreation Areas designated by Act of Congress; and prohibit the use of acidic or toxic substances in road surfacing.

One commenter felt that § 816.150 fails to provide meaningful,. national standards for the design, construction, maintenance, and reclamation of roads. The commenter referred to a discussion of the need for detailed performance standards in the preamble to the 1979 final rule where OSMRE stated, in part, that there were many comments recommending that OSMRE "limit the Federal performance standards to generalized guidelines and suggestions which would then serve as the nucleus for the State regulatory authorities to develop standards unique to local conditions." In response to these recommendations, OSMRE "determined that such general standards, incorporating broad interpretation capabilities, would not be consistent with the intent of the Act or the rest of the regulatory scheme" (44 FR 14901, 15246, March 13, 1979). The commenter suggested that the proposed rule was inconsistent with the position expressed in 1979.

Where it is appropriate to "flesh out" portions of the Act in the implementing regulations, OSMRE has not hesitated to do so. OSMRE believes that § 816.150 does provide sufficient national standards for the design, construction, maintenance, and reclamation of roads, while allowing consideration of the variations in site-specific conditions that can be encountered at different operations throughout the coal fields. These standards necessarily allow the regulatory authority the flexibility to identify the measures that are appropriate for the site-specific characteristics of each surface coal mining operation. In 1979, OSMRE has less then one year of experience regulating surface coal mining operations. Now, after ten years of experience, most of that in oversight of approved State programs, which deal with roads quite effectively, but through quite varied approaches, OSMRE feels that the expansion of the statutory language being promulgated today is fully adequate the ensure that statutory standards are met.

The same commenter and another commenter particularly noted the removal of the phrase "minimize the diminution to or degradation of the quality or quantity of surface and ground-water systems" from § 816.150(b)(5) of the 1983 rule. The commenters suggested that specific language for protection of both quantity and quality of surface and groundwater systems from adverse impacts of roads should be reinstated into the final rule. A third commenter was concerned that the water quality and quantity provisions removed from § 816.150(b)(5) of the remanded and suspended 1983 regulations were not adequately covered in other regulations.

OSMRE did not propose a provision specifically addressing the impact of roads on the quantity and quality of surface and groundwater systems, such as that contained in the remanded and suspended 1983 rule. Adequate standards to ensure compliance with section 515(b)(17) of the Act are provided by the other provisions of §§ 816/817.150(b) and by 30 CFR 780.21 and 784.14. After considering the comments, OSMRE does not believe that adding such a standard specifically for roads would add to the effectiveness of this rule.

One commenter suggested that the final rule should be clarified to ensure that it includes performance standards for roads that will protect all private property from damage. The commenter wanted to insure that all private properties are protected and not just those areas listed in section 522(e) of SMCRA. Another commenter argued that inserting into § 816.150(b)(6) the lands listed in section 522(e)(1) of the Act inserts unsuitability criteria into this performance standard. The commenter maintained that OSMRE lacks authority to include the list in § 816.150(b)(6). Two commenters suggested that the list be deleted because these lands already have provisions for special consideration.

Final § 816.150(b)(6) requires the operator to protect both private property and public property, placing special emphasis on certain types of public property. OSMRE has enumerated those areas covered by the mining prohibitions of section 522(e)(1) of the Act to ensure that special consideration is given these public properties. This enumeration does not remove the operator's requirement to protect other public property or private property as required by section 515(b)(17). OSMRE does not agree that including the list of areas covered by section 522(e)(1) of the Act in § 816.150(b)(6) constitutes an insertion of unsuitability criteria. OSMRE believes that inclusion of these specific areas in § 816.150(b)(6) appropriately emphasizes the importance attached to such areas by Congress in drafting the Act, without providing less protection for other public

and private property under this provision.

One commenter was concerned that § 816.150(b) would require the reconstruction of existing permitted roads causing extensive environmental damage. The commenter suggested that the regulatory authority should be able to waive certain performance standards, e.g. drainage control, cut and fill slopes, and lane widths, as along as erosion and stream sedimentation are controlled.

OSMRE did not include such a waiver provision in the final rule. In accordance with 30 CFR 701.11(e), existing structures, including roads, that meet the performance standards may be exempted from meeting the design requirements. To the extent that changes may be required by a regulatory authority to bring existing permitted roads into compliance with this rule, no significant reconstruction and expense or increased environmental harm is expected. Existing permitted roads should already be in compliance with the performance standards of a State or Federal regulatory program.

One commenter noted that § 816.150(b) refers to erosion requirements for roads, but lacks sediment control standards. The commenter argued that, without some guidance, it would be difficult for states to be "no less effective" in parallel provisions of their regulations.

OSMRE did not accept this comment. OSMRE believes that adequate performance standards for sediment control can be found in §§ 816/817.150(b). These standards are fully consistent with the requirements of section 515(b)(17) of the Act. OSMRE recognizes that the mechanisms for achieving that standard vary widely over the wide range of topographic, climatological and geologic conditions, and also vary according to the uses of the roads, where these standards will be applied. OSMRE therefore feels further guidance is not appropriate or necessary. States may or may not choose to elaborate upon this guidance in ways specific to the conditions in those States. So long as the required results are achieved in actual implementation, such elaboration is at the States's discretion.

One commenter was unsure if the performance standards in § 816.150(b) were intended to relieve coal mine operators of the general requirements to meet effluent limitations. The commenter thought that 30 CFR 816.46, which prescribes performance standards for siltation structures, excluded roads from meeting effluent limits and wondered if § 816.150(b) could be interpreted the same way. Another commenter was confused about the application of performance standards for drainage control systems for roads. The commenter noted that, under 30 CFR 816.46(a)(2), drainage from roads for which the upstream area is not otherwise disturbed by the operator is exempt from the requirement of passing through a siltation structure. The commenter, however, also noted that the disturbance associated with roads must be conducted to minimize disturbance to the hydrologic balance as required in §§ 816.41 and 816.45. The commenter was concerned as to what the specific drainage control requirements are for roads.

Effluent limitations only apply to point source discharges regulated under section 402 of the Clean Water Act. Section 816.150(b) does not require the creation of a point source. However, if a point source is created, a National Pollutant Discharge Elimination System permit would be required and effluent limits would apply. A variety of other mechanisms may also be and are being used to provide the required protection of water quality.

Two commenters were concerned with the word "prevent" in § 816.150(b)(1) through (3) and (6). It was suggested that it be deleted because it was the intent of Congress to have OSMRE set attainable standards which would "minimize" erosion and "prevent" damage. The commenters felt that it would be unrealistic to require an operator to "prevent" erosion, siltation, and air pollution. Another commenter favored deletion of both "control" and "prevent."

OSMRE did not accept the suggestions and believes that the language in § 816.150(b) is consistent with the language in the Act at section 515(b)(17) which requires the operation as a minimum to insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property (Emphasis added). It should be noted that § 816.150(b) allows the regulatory authority the flexibility to determine the level of protection necessary to control or prevent erosion, siltation, or air pollution attendant to erosion.

One commenter suggested that the language in § 816.150(b)(1) with respect to exposed surfaces be clarified by adding the word "road" between exposed and surfaces.

OSMRE does not agree that this clarification is necessary because those surfaces exposed in connection with construction, use, reconstruction, maintenance, or reclamation of the road are properly subject to this requirement.

Four commenters responded with respect to the control of air pollution. One commenter supported the language in § 816.150(b)(1), and asserted that OSMRE is the appropriate agency to regulate fugitive dust at coal mining operations. One commenter requested that OSMRE change the language in § 816.150(b) in its entirety. This commenter was concerned that air and water quality standards were being intermixed. The commenter also noted that previous district court decisions clarified that Congress only intended to regulate air pollution related to erosion. One commenter stated that the issue of responsibility in the control of air pollution attendant to erosion and pollution caused by fugitive dust as part of a surface mining operation is currently on appeal. Another commenter was concerned that including specific air pollution control measures in § 816.150(b) would lead to these measures being interpreted as the exclusive means necessary for compliance. It was suggested that these measures be kept only in the preamble.

OSMRE believes that the language in § 816.150(b)(1) is in harmony with the intent of Congress. It is appropriate for OSMRE to regulate road dust consistent with section 515(b)(17) of the Act because of the need to protect public and private property. It is being applied here in a manner consistent with section 515(b)(4). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision concerning the issue of responsibility for control of air pollution attendant to erosion (*NWF v. Hodel*, 839 F.2nd 694, 765). The appeals court concluded that the Secretary's interpretation of section 515(b)(4) of the Act, as controlling only the impacts of mining on air quality due to erosion, is reasonable. OSMRE also believes that the use of the terms "erosion," "siltation," and "air pollution attendant to erosion" in § 816.150(b)(1) is appropriate in considering what measures are necessary to meet the performance standards. OSMRE does not intend this list of measures to exclude the use of other measures for controlling dust attendant to erosion and does not intend that the language in § 816.150(b)(1) be interpreted that way. The phrase "such as" makes that clear.

The EPA noted that proposed § 816.150(b)(1) stated that road should be built, used and maintained to control "air pollution attendant to erosion" and that the preamble to the proposal explained that this phrase includes "road dust, as well as dust occurring on

other exposed surfaces" (52 FR 42262, November 3, 1987). EPA suggested that the explanation should be included in the final rule language to clarify that the performance standards apply not only to wind erosion, but also to dust created by vehicle traffic.

OSMRE has accepted this comment and made the suggested change to clarify the applicability of the final rule.

EPA noted also that proposed § 816.150(b)(1) stated that air pollution should be controlled "in accordance with current, prudent engineering practices." EPA stated its belief that the final rule should specify reasonable control levels and techniques suitable under various conditions and requested the addition of a technical guidance document that would address current practices and their effectiveness under varying conditions. The agency suggested that the technical guidance could be developed in the near future and be incorporated into the regulation by reference at a later date.

After giving this recommendation serious consideration, OSMRE decided not to accept it. Differing geologic and climatic factors associated with the coal fields throughout the nation make it impractical to develop a single set of dust control standards and techniques with nationwide applicability. In accordance with the concept of primacy, whereby the States have the primary responsibility for the regulation of coal mining, this final rule gives State regulatory authorities the flexibility to establish guidance that is appropriate to regional and local conditions. On request, OSMRE will provide techincal assistance to the States concerning the development or application of dust control standards and techniques. The primary purpose of this rule is to make clear that regulatory authorities have both the authority and obligation to regulate road dust while recognizing that operations have a wide range of options available for controlling it.

As to the EPA's concern about the effectiveness of the treatment methods employed by the operator, before a mining permit is issued, the regulatory authority has to approve the air pollution control plan submitted by a permit applicant under 30 CFR 780.15 or 784.26. In addition, monthly inspections by regulatory authority inspectors under 30 CFR 840.11 and inspections resulting from citizens' complaints filed anytime under 30 CFR 840.15 and Part 842 will ensure that potential on-the-ground problems are resolved quickly and efficiently.

One commenter was concerned that § 816.150(b)(5) would prohibit placement of any road anywhere it would alter flow in a streambed or drainage channel. The commenter asserted that the terms "streambed or drainage channel" could be construed so as to include even the smallest ephemeral flow. The commenter suggested a language change that would replace "streambed or drainage channel" with "intermittent or perennial stream."

OSMRE did not accept this suggested language change since it is not consistent with section 515(b)(18) of the Act which uses the phrase "streambed or drainage channel." Further, OSMRE does not agree that § 816.150(b)(5) would necessarily prohibit placement of any road where it would alter flow in streambeds or drainage channels because the language in this section states that the road shall refrain from "seriously" altering the normal flow. OSMRE does not regard this language as a strict prohibition on the placement of roads that would cause minor alterations in normal flow.

Sections 816.150(c)/817.150(c) Design and Construction Limits and Establishment of Design Criteria

Final § 816.150(c) requires that roads be designed and constructed or reconstructed to meet certain criteria in order to ensure environmental protection appropriate for their planned duration and use. These criteria include limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, that are in accordance with current, prudent engineering practices, and any other necessary design criteria established by the regulatory authority. Section 816.150(c) is identical to the proposed rule.

One commenter agreed with the deletion of the provisions addressing road safety that had previously been included in the 1983 rule, noting that road safety for users is the responsibility of the Mine Safety and Health Administration.

One commenter raised the question of what standards for road width, drainage control, culvert placement, etc. will apply in Federal program States since OSMRE sets forth no more detailed limits for Federal program States under § 816.150(c). The commenter was also concerned about inadequate regulation by States with "no more stringent" provisions in the absence of standards in the Federal rules.

Concerning Federal program States, where OSMRE is the regulatory authority, OSMRE will consider on a program-by program basis unique factors and regional and local conditions present in each State and will propose and promulgate appropriate standards in accordance with 30 CFR Part 736 if it determines that program-wide design criteria are needed. Concerning States that have legislatively prohibited their regulatory authorities from promulgating regulations more stringent than the Federal regulations, OSMRE considers that the regulations adopted today provide a reasonable expansion of the statutory requirements and are adequate for effective regulation of surface coal mining operations. Further expansion and additional regulations may be promulgated at the States' discretion. OSMRE does not believe that use of design standards by a State in its rules would necessarily be more stringent than the Federal rules. This issue was also addressed by the Secretary in his March 5, 1984 brief in *Round II*, referenced earlier.

One commenter suggested that the design, construction, and certification of ancillary roads should also be done by a qualified registered professional to ensure proper drainage control and stability of road embarkments.

OSMRE believes the suggested requirement to have ancillary roads designed, constructed, and certified by a qualified professional is not necessary to ensure compliance with the performance standards because such roads have much less potential for environmental harm than do primary roads because of differences in size, use and/or duration. Ancillary roads are generally only one lane for small vehicles, thereby involving far less earthmoving in their construction. Vehicles using ancillary roads are generally small with light loads and ground pressures. Therefore, to require certification of plans and drawings for ancillary roads would place a burden on the operator that is unnecessary to provide the protection called for in section 515(b)(17) of the Act.

One commenter was concerned that the use of the term "surface materials" in § 816.150(c) implied a requirement for surfacing all roads. The commenter did not feel that a "blanket" surfacing requirement was appropriate because in many instances the natural surface of a road was sufficient to meet the appropriate performance standards. The commenter suggested that the words "any necessary" should precede the term "surface materials" in the text of the rule.

OSMRE does not agree that the addition of these words is necessary because the language in § 816.150(c) states that surface materials appropriate for the planned use of the road need to be incorporated into the design and

construction or reconstruction to ensure environmental protection. This requirement does not preclude a finding by the regulatory authority that the natural surface of the road meets the performance standards.

Section 816.150(d)/817.150(d) Location

Final § 816.150(d) sets the performance standards for the location of all roads. These standards prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the regulatory authority specifically approves such an action in accordance with applicable §§ 816.41 through 816.43 and 816.57. Also, roads must be located to minimize downstream sedimentation and flooding. The language in § 816.150(d) is identical to the proposed rule except that reference to the performance standards in accordance with which the regulatory authority may approve placement of a road in the channel of a stream (§§ 816.41 through 816.43 and 816.57) have been added to the final rule for clarity.

One commenter argued that the language in the proposed rule prohibits the use of structures such as bridges or culverts. The commenter considered this a drastic departure from the Act and beyond the intent of section 515(b)(18). The commenter provided suggested language to better reflect the statutory requirements. The suggested language read, "(1) No road shall be built in a streambed or drainage channel."

OSMRE did not accept the commenter's suggestion. Section 816.150(d) is not intended to establish a strict prohibition on the use of structures such as bridges and culverts. Section 816.43, Diversions, allows the regulatory authority to specify design criteria for the diversion of intermittent and perennial streams. Section 816.43 also requires the regulatory authority to make a finding that the environmental resources of the stream will not be adversely affected.

One commenter noted that § 816.150(d)(1) does not contain a cross reference to § 816.57 as does § 816.151(d)(5). The commenter was unclear if this was intended or was an inadvertent omission by OSMRE.

In response to this comment, OSMRE has reviewed the reference to hydrologic balance protection and stream buffer performance standards in proposed § 816.151(d)(5) and determined that those performance standards should be applied to the location of any road in the channel of an intermittent or perennial stream, as well as to the alteration or relocation of natural stream channels by primary roads. Therefore, OSMRE has added the reference to the performance standards (§§ 816.41 through 816.43 and 816.57) to § 816.150(d)(1) of the final rule.

Section 816.150(e)/817.150(e) Maintenance

Final § 816.150(e) governs the general maintenance responsibilities of the operator. Under this section, a road must be maintained to meet the performance standards and any additional design criteria established by the regulatory authority. Section 816.150(e) also requires that, in the event of damage due to a catastrophic event, a road must be repaired as soon as is practicable after the damage has occurred. The language in § 816.150(e) is identical to the proposed rule.

One commenter supported the language found in § 816.150(e) because it no longer contains the requirement from previous remanded and suspended rules to maintain a road throughout its life. The commenter agrees that the Act does not impose a perpetual responsibility for roads in the postmining use period. In contrast, one commenter was concerned with the deletion of the requirement to maintain a road throughout its life. The commenter argued that operators are liable under the Act for roads and suggested reinstatement of the requirement to maintain roads throughout their life.

OSMRE did not propose this requirement because, under the Act, an operator has no responsibility for maintenance of the postmining land use after the performance bond has been properly released for the area in which the road is located. For this same reason, the suggestion that the requirement be added was not accepted.

Section 816.150(f)/817.150(f) Reclamation

Final § 816.150(f) provides that a road which is not to be retained under an approved postmining land use must be reclaimed as soon as practicable after it is no longer needed for mining and reclamation operations. The reclamation activities that are required by this paragraph include: (1) Closing the road to traffic; (2) removing all bridges and culverts unless approved as part of the postmining land use; (3) removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and the revegetation requirements of the regulation; (4) reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain; (5) protecting the natural drainage pattern by installing dikes or cross drains as necessary to control surface runoff and erosion; and (6) scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 30 CFR 816.22 and 816.111–816.116. As discussed below, the final rule differs from the proposal in that the phrase "as soon as practicable" has replaced the word "immediately."

Three commenters were concerned with the word "immediately" in the phrase "shall be reclaimed in accordance with the approved reclamation plan immediately after it is no longer needed for mining and reclamation operations." The commenters believed it to be an unreasonable requirement that is subject to varying interpretations. The commenters noted that it may actually be environmentally undesirable for a road to be reclaimed during certain times of the year, due to problems with runoff and sediment control. One of these commenters argued that the immediate reclamation of a road would eliminate needed flexibility and preclude reuse of the road if mining and reclamation conditions change. One commenter noted that immediate reclamation is not needed to enforce the intent of the regulation.

OSMRE agrees with the commenters and has substituted the phrase "as soon as practicable" for the word "immediately" in § 816.150(f) of the final rule. OSMRE believes that the phrase "as soon as practicable" is in keeping with the intentions of the Act as expressed in sections 102(e), 515(b) (2) and (16), which basically require reclamation to take place as contemporaneously as practicable with mining. However, this requirement does not become operable until the road is no longer needed. To postpone reclamation, the permittee must show a future need for or continuing use of the road as a part of his operation. The operator is required to maintain the road during this period. The reclamation schedule necessary to meet the requirement for timely reclamation should be contained in the permit and be consistent with the intent of the Act, by providing for reclamation which is as contemporaneous as practicable, minimizing unreasonable delays in reclamation implementation, and proceeding in an environmentally sound manner.

One commenter believed that proposed § 816.150(f) should allow coal exploration roads to remain if they comply with the postmining land use. In the commenter's opinion, if retained, these roads would allow for better

management of the forest reserve through better access for timber management and fire fighting activities.

OSMRE agrees that the retention of roads can be beneficial and has made provision in 30 CFR Part 815 for the retention of coal exploration roads in limited circumstances. Specifically, § 815.15(d) provides an exemption from the requirement that all facilities and equipment be promptly removed from the exploration area when they are no longer needed. If the regulatory authority determines that the facilities or equipment will provide additional environmental data, reduce or control the on-site and off-site effects of the exploration operation, or facilitate future surface mining and reclamation operations, the facilities (roads) and equipment may be retained. The operator must apply to the regulatory authority for approval of the retention on a case-by-case basis. To the extent that coal exploration roads meet one of these three criteria, they may be exempted from the reclamation requirement. However, it should be noted that the concept of an approved postmining land use is not applicable to coal exploration activities since exploration is not mining. Therefore, OSMRE did not accept the suggested change.

One commenter suggested that some language should be added to § 816.150(f) to clarify that both primary and ancillary roads are considered to be part of the surface coal mining operation and subject to the performance standards.

OSMRE agrees that both primary and ancillary roads are part of the surface coal mining operation. However, OSMRE believes that the wording of § 816.150, *Roads: General,* is sufficiently clear in applying that section to all roads as defined in 30 CFR 701.5. Therefore, no change has been made.

One commenter supported the phrase "as necessary" in the requirement in § 816.150(f)(4) that reclamation of a road include "reshaping cut and fill slopes as necessary to be compatible with the postmining land use and revegetation requirements." The commenter noted that this language recognizes that it is not always an approporiate requirement to redisturb an area for reshaping where stability of a slope has been assured to the satisfaction of the regulatory authority. In contrast, one commenter objected to the phrase "as necessary" because it dilutes or loosens the requirements contained in the remanded and suspended 1983 rule to reshape cut and fill slopes to be compatible with the postmining land use and to return the land to the approximate original contour.

In developing the proposed rule OSMRE looked at how this issue was handled in the remanded and suspended 1979 rule. OSMRE stated in the preamble to that final rule that "obliteration of the road might in some circumstances create extensive environmental harm due to excessive redisturbance of the road prism. Therefore, the concept of blending the road into the topography was incorporated [into the final rule] based on comments received and work practices on thousands of miles of roads by the U.S. Forest Service" (Citation omitted.) (44 FR 14901, 15259, March 13, 1979). OSMRE went on to emphasize "that this blending is not to be construed as a variance from the requirement to restore the area to approximate original contour." Also, the statutory definition of "approximate original contour" allows the retention of terrances (section 701(2) of the Act). For these reasons, OSMRE proposed language similar to that used in 1979. After consideration of the comments, OSMRE feels that the position stated in 1979 and repeated here is still valid. Thus, OSMRE did not delete the phrase "as necessary" from the final rule.

One commenter supported proposed § 816.150(f)(6), which allows the use of topsoil substitutes in reclaiming roadbeds. The commenter stated that this will accommodate the beneficial practice of redistributing topsoil taken from road areas for use in permit areas where it will promote better postmining land use.

OSMRE agrees that topsoil substitutes may be used in reclaiming roads and emphasizes that any such substitute material is subject to the requirements of § 816.22.

G. Sections 816.151/817.151 Primary Roads

Final § 816.151 establishes a set of performance standards for the design, construction, and maintenance of primary roads, in addition to those already established for all roads in § 816.150. These performance standards are identical to the proposed rule except for § 816.151(b) and (d) which have been changed to clarify the intent of the rule.

Sections 816.151(a)/817.151(a) Certification

Final § 816.151(a) is identical to the proposed rule and requires that primary road construction or reconstruction be certified in a report to the regulatory authority by a qualified registered professional engineer or land surveyor. The requirement for professional certification is intended to assure that the road is properly constructed to meet the environmental protection standards of the Act. Certification by a qualified registered professional land surveyor is allowed in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads. This provision is based on the November 4, 1983, amendment to the Act (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)) which provides that "not withstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps, or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." A registered land surveyor must have experience in the design and construction of roads in order to be eligible to provide this certification. This authority is given only to the extent allowed under State law. This requirement is equivalent to the experience requirement for registered engineers. Section 816.151(a) requires the certifying professional to prepare and submit to the regulatory authority a report certifying that the primary road was constructed or reconstructed as designed and in accordance with the approved plan.

One commenter did not agree with the language that authorizes land surveyors to certify the construction or reconstruction of primary roads. The commenter noted that the design and engineering of primary roads is outside the area of expertise of land surveyors. The commenter was particularly concerned with the adequacy of a land surveyor's expertise for roads in steep slope areas and the frequent use of primary roads by coal hauling vehicles.

OSMRE recognizes the fact that not all land surveyors have adequate expertise to certify road construction or reconstruction and, with this in mind, uses the terms qualified and experienced in the design and construction of roads. OSMRE feels that this language covering the experience and qualifications of the certifying individual and the additional requirement that the State must authorize a land surveyor to certify primary road construction or reconstruction provides adequate justification. In view of the legislative history of the November 3, 1983 amendment to the Act, OSMRE has concluded that the Congress intended the amendment to authorize certification

because it is a step so intimately related to preparation of cross-sections, maps and plans that authority is necessarily implied by the terms of the legislation. As discussed by Senator Byrd on the floor of the Senate (129 Cong. Rec. S12411, Sept. 19, 1983), the purpose of the amendment was to remedy "conflicts with State laws [where the Act] preempts registered land surveyors from a lead role in the preparation and certification of maps, plans, and cross-sections."

OSMRE believes that Congress intended to authorize qualified, registered, professional land surveyors to perform both of these functions as lead professionals. If land surveyors were authorized merely to prepare and certify cross sections, maps, and plans, but were not authorized to certify associated construction or reconstruction, their status as lead professionals would be seriously impaired or negated. Thus, this rule authorizes qualified, registered, professional land surveyors to certify the construction or reconstruction of primary roads.

One commenter noted that a registered land surveyor would have to have experience in the design and construction of roads in order to have a State authorize the land surveyor to certify such work. The commenter indicated the language "with experience in the design and construction of road" to be unnecessary.

OSMRE believes that the language in § 816.151(a) is necessary to ensure that only these land surveyors with experience in the design and construction of roads be allowed to certify this work.

One commenter suggested that landscape architects should also be allowed to certify the construction and reconstruction of roads. The commenter noted that the education and experience of landscape architects coupled with their registration would qualify them to develop plans and manage the construction of all types of roads associated with coal mining.

OSMRE does not have the statutory authority to allow landscape architects to certify cross sections, maps and plans or to authorize them to certify that the construction or reconstruction of primary roads was in accordance with those plans.

Four commenters recommended that the requirement in § 816.151(a) to have the certified report sent to the regulatory authority should be changed to allow the report to be filed at the mine site or in a report to the regulatory authority. The commenters noted that the report should be available to the inspectors at the mine site and, by filing the report at the mine site, it would reduce the amount of paperwork that the regulatory authority would have to handle.

OSMRE believes that it is necessary to have the certified report sent to the regulatory authority so that any problems can be brought to the State's attention and so that the State has the opportunity to adequately monitor corrective action that may be necessary. Having the information on file in the State office also provides advance information to inspectors before beginning an inspection trip. Although OSMRE is sensitive to the concern that regulatory authorities' paperwork burdens should be reduced where possible, OSMRE does not agree that the limited time involved in handling this certified report outweighs the need to have it available at the regulatory authority's office.

Sections 816.151(b)/817.151(b) Safety Factor

Final § 816.151(b) requires that all embankments have a minimum static safety factor of 1.3 or meet the requirements of § 780.37(c). This section applies only to primary roads. Rather than specifying particular design criteria for road embankments, the 1.3 factor of safety establishes a performance standard that must be attained. The operator has the flexibility to select the particular design for the road that meets this standard. Related § 780.37(c) enables the regulatory authority to establish engineering design standards through the State program approval process in lieu of engineering tests that would be performed to establish compliance with the safety factor. The language in final § 816.151(b) has been changed from the proposed language by adding a cross-reference to § 780.37(c) for clarity.

One commenter did not agree that a safety factor for road embankments was necessary, except for large embankments and those embankments which could endanger life or property upon failure. The commenter suggested new language for § 816.151(b) that would remove the minimum safety factor requirement and require that primary road embankments be designed in accordance with standard engineering practice so as to be stable.

Two commenters agreed that the safety factor should only be applicable to primary roads. The commenters noted that, in general, ancillary roads are much smaller and less frequently used than primary roads. They also noted that, if an ancillary road would experience a slope or fill stability problem, the extent of these failures and the significance of the associated environmental impacts would be minimal.

One commenter argued that it is necessary to apply the minimum safety factor to ancillary as well as primary roads. The commenter argued further that the differentiation between primary and ancillary roads was not based on the potential for environmental effects to the point of being consistent with the concept in the 1979 rule, that minimum safety factors should apply only to roads that have greater environmental effects. The commenter specifically noted that the existence of high embankments, a factor specifically discussed by OSMRE as related to the degree of environmental risk from roads, is not a factor which is considered in the proposed distinction between primary and ancillary roads. As a result, the commenter concluded, ancillary roads with high embankments in steep slope areas, the failure of which could have serious environmental effects, would not be subject to static safety requirements.

As discussed previously in the preamble to the road classification system, there are substantial differences between primary and ancillary roads concerning road width (and thus the amount of cut and fill involved in steep slopes), ground pressure from traffic, and vehicle frequency that justify the application of the static safety factor to ensure stable primary roads that will meet the mandate of section 515(b)(17) of the Act. This reduces the potential for slips or failures on those heavily used roads. On the other hand, the narrow, lightly travelled ancillary roads do not typically have the high embankments associated with primary roads, even in steep slope areas, nor are they subject to the frequent impact of high ground pressures. Therefore, OSMRE is finalizing the rule as proposed.

A commenter expressed confusion about the fact that proposed §§ 780.37(c) and 784.24(c) appeared to allow the regulatory authority to develop design standards in lieu of the minimum safety factor. The commenter argued that the language in the proposal was confusing and should be clarified concerning the regulatory authority's flexibility to develop design standards under § 780.37(c) in lieu of minimum safety factor requirements. Three additional commenters suggested language changes to § 816.151(b) to help clarify the fact that regulatory authorities can establish engineering design standards in lieu of the minimum safety factor requirement.

Section 780.37(c) allows the regulatory authority to establish engineering design standards for primary roads in lieu of

the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3 for all primary road embankments. This provision enables the regulatory authority and the operator to save time and effort during the design and review of road plans and also ensures protection of the environment through the application of standards that have proved effective for the conditions prevalent in that State. Section 780.37(c) was not cross-referenced in proposed § 816.151(b), and OSMRE recognizes, in response to the comments, that the connection needs emphasis. Final § 816.151(b) includes a cross-reference to § 780.37(c) to clarify that embankments must either have a minimum safety factor of 1.3 or, alternatively, meet the design standards developed in accordance with § 780.37(c).

Sections 816.151(c)/817.151(c) Location

Final § 816.151(c) requires primary roads to be located, insofar as is practicable, on the most stable available surfaces to minimize erosion. Section 816.151(c)(2) prohibits primary roads from using stream fords on perennial or intermittent streams unless specifically approved by the regulatory authority as temporary routes during road construction. These provisions are identical to the proposed rule.

One commenter was concerned about the difference in the language of proposed § 816.151(c) and that of the 1979 regulations (44 FR 15416, March 13, 1979). The commenter noted that the language in 816.151(c) states that primary roads are located, insofar as is "practicable," on the most stable available surface, while the 1979 regulations require roads to be placed on the most stable surface insofar as "possible." The commenter proposed that, in the alternative, roads be required to be located on ridges.

OSMRE disagrees. In developing the proposed rule, OSMRE chose to use the word "practicable" because it provides an adequate standard for road location to achieve the required stability when applied along with the requirement for a 1.3 static safety factor. OSMRE is concerned that requiring location of primary roads, insofar as is "possible," on the most stable surface available could result in roads being unnecessarily lengthened. In the preambles to both the 1979 (44 FR 14901, 15248, March 13, 1979) and 1983 (48 FR 22110, 22120, May 16, 1983) suspended rules, OSMRE expressed concern that road location requirements might unduly lengthen roads as well. Concerning the commenter's alternative, OSMRE agrees that ridges are often the most stable surface available and should be used for roads where practicable. However, ridges are not always located where the road is intended to go. Additionally, in appropriate circumstances, wildlife disturbance can be reduced by locating roads below ridgelines (Ambrose, *et al.*, p. 14). Since this alternative would not allow sufficient flexibility in the location of roads, OSMRE did not accept it.

Sections 816.151(d)/817.151(d) Drainage Control

Final § 816.151(d) requires that surface water drainage for each primary road be controlled in accordance with the approved reclamation and operations plan specified in § 780.37(a).

Final section (d)(1) requires that primary roads be constructed or reconstructed, and maintained to have adequate drainage control by using structures such as, but not limited to, bridges, ditches, cross drains and ditch relief drains. Section (d)(1) also requires that, at a minimum, drainage control systems be designed to safely pass the peak runoff from a ten-year, six-hour precipitation event, or greater event as specified by the regulatory authority. The language in final § 816.151(d)(1) has been changed from the proposed language in an effort to clarify its intent because proposed § 816.151(d)(1) could be read to mean that the regulatory authority may specify a lesser precipitation event than the ten-year, six-hour event. To clarify that the ten-year, six-hour event is the minimum precipation event that the drainage control system must be able to handle, the final rule allows only modification to a higher standard by the regulatory authority.

Final § 816.151(d)(2) requires that drainage pipes and culverts be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets. Final § 816.151(d)(3) requires that drainage ditches be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment. Final § 816.151(d)(4) requires that culverts be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road. Final § 816.(d)(5) requires that natural stream channels not be altered or relocated without prior approval of the regulatory authority in accordance with §§ 816.41 through 816.43 and 816.57.

Final § 816.151(d)(6) requires that, except as provided in section (c)(2), stream channel crossings for perennial and intermittent streams be accomplished using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The requirement for drainage structures at perennial and intermittent streams is included to ensure consistency with § 816.150(d)(1) of this part. By using current, prudent engineering practices to design, construct, and maintain crossings, the hydrologic and environmental balance of the stream is protected while the crossing is in place. Section 816.151(d)(6) includes language referring to perennial and intermittent streams for consistency with the language of performance standard in § 816.150(d).

Several commenters requested a clarification as to the intent of proposed § 816.151(d)(1) which stated, "The drainage control system shall be designed to safely pass the peak runoff from a ten-year, six-hour or greater precipitation event, unless otherwise specified by the regulatory authority." The confusion involved whether the regulatory authority could specify only a precipitation event greater than the ten-year, six-hour storm, or any greater or lesser precipitation event. One commenter suggested that the words "or greater precipitation" be deleted so the regulatory authority could, based on site-specific conditions, reduce the design storm below the ten-year, six-hour event.

Final § 816.151(d)(1) provides flexibility to regulatory authorities to account for particular situations likely to be encountered over the life of the mine or related to specific downstream conditions. The rule allows for modification by the regulatory authority in those situations when the ten-year, six-hour precipitation event is not appropriate. In order to eliminate the confusion created by the language in proposed § 816.151(d)(1), OSMRE has changed the final rule to read, "(1) Each primary road shall be constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a ten-year, six-hour precipitation event, or a greater event as specified by the regulatory authority." This will ensure that reductions in the required storm event are not made.

Several commenters suggested that the design precipitation event for the drainage control system should be modified from the ten-year, six-hour event in the proposed rule. One commenter suggested the use of the 25-

year, 24-hour storm event, the ten-year, six-hour event or another event specified by the regulatory authority. The commenter maintained that the 25-year, 24-hour event is consistent with current local practices and has not caused any problems. Another commenter stated that the ten-year, six-hour event is excessive, and the one-year, 24-hour event should be used to design the drainage control system. The commenter argued that no problems have been experienced with excessive water overtopping the road surface during major storm events when the one-year, 24-hour standard was used. Two other commenters were satisfied that the ten-year, six-hour storm would be appropriate.

Another commenter contended that the drainage control systems should be designed for a ten-year, 24-hour storm event rather than a ten-year, six-hour event because better data is available for the 24-hour events. Also, the commenter indicated that the peak flows for ten-year, 24-hour events and ten-year, six-hour events do not differ significantly. One commenter believed that the ten-year, six-hour event standard could create compliance problems since some states currently design for a 25-year, 24-hour event. If the ten-year, six-hour event produces higher peak runoff volumes than the 25-year, 24-hour event, the commenter maintained that existing approved roads could be found in non-compliance. (See the discussion under *General Comments* concerning existing structures.)

OSMRE believes that the ten-year, six-hour precipitation event is appropriate for drainage control systems for primary roads. This design event makes the road rules consistent with the rules for diversions in § 816.43. OSMRE recognizes that for some basins, depending on location, the 24-hour duration storm may result in a runoff volume somewhat higher than the six-hour storm for the same area (44 FR 15207, March 13, 1979). However, for most mining situations, a six-hour event is more likely to result in a higher peak flow. See the Final Environmental Statement, OSM–EIS–1: Supplement, Volume 1: Analysis, p. IV–17. For a given storm frequency, the time of concentration and watershed shape can be more influential in determining the peak flow than the storm duration. Therefore, in most cases the differences in any increased volume of peak flow will be minor from a practical design and construction standpoint. Any computed increase in peak flow volume would most likely not result in any significant change in flow depth or flow velocity and, correspondingly, any alteration in the design of the drainage control system. Thus, OSMRE did not find any compelling reasons to change the proposed design event standard in response to comments on the proposed rule.

One commenter asserted that drainage control systems designed to pass the peak runoff from a ten-year, six-hour or greater precipitation event as required in proposed § 816.151(d)(1), would be inadequate. The commenter argued that drainage control systems for ancillary roads, especially those with high embankments and those in steep slope areas, should be required to be designed to safely pass the peak runoff from some precipitation event that is greater than the ten-year, six-hour storm. The commenter was also particularly concerned with long-term or permanent roads where there is potential danger to health and/or safety or significant environmental impacts. The commenter suggested that drainage control systems for long-term roads have a minimum of a 25-year precipitation event, and permanent roads have a minimum of a 100-year precipitation event. The commenter also suggested that drainage control systems on roads with high potential for injury or significant environmental damage should be designed to appropriate precipitation event standards.

Another commenter suggested that there should be a distinction made in the design precipitation events for temporary water crossings versus permanent structures. The commenter argued that permanent structures have a longer intended life and should be designed accordingly. The commenter suggested that the design precipitation event for permanent structures should be the 100-year, six-hour event, with the exception for low-water crossings since they are designed to be overtopped.

OSMRE believes that a minimum standard of a ten-year, six-hour precipitation event for the design of drainage control system is adequate to protect the public and the environment from significant damage. The U.S. Army Corps of Engineers and State highway departments use ten-year storms for design purposes. The regulatory authority may specify a greater precipitation event as appropriate for site-specific conditions and situations. Concerning ancillary roads, OSMRE considers that the standards in final § 816.150(b) (2) through (6) are adequate to protect the environment without details associated with the standards for primary roads. The standards in § 816.150(b) allow the operator and the regulatory authority to use a variety of methods to minimize adverse environmental impacts from ancillary roads.

One commenter suggested that proposed § 816.151(d)(1) be revised to delete the word "reconstructed." The commenter argued that roads in existence at the time that this rulemaking is adopted should not be required to be reconstructed.

OSMRE does not agree. The word "reconstructed" in the context of this rule refers to those situations where an operator on his own initiative decides to upgrade or improve significantly a road by reconstructing it. The application of these standards to existing roads is covered by the provisions of 30 CFR 701.11(e), concerning existing structures.

One commenter suggested that the word "avoid" in proposed § 816.151(d)(2) be replaced by the word "control." The commenter noted that, because some erosion is unavoidable, the use of the word "avoid" makes it possible for an operator to meet this requirement.

Since the language of section 515(b)(17) of the Act requires control or prevention of erosion, not avoidance of erosion, OSMRE has deleted the word "avoid" and replaced it with "prevent or control" in the final rule.

One commenter noted that the performance standards for diversions are found in 30 CFR 816.43, but the definition of "diversion" in 30 CFR 701.5 does not explicitly include stream channel crossings. The commenter suggested revising the definition of "diversion" to clarify that stream channel crossings (i.e., culverts, bridges, fords, etc.) are included in the definition and that the requirements of § 816.43 apply to roads. The commenter also suggested that specific reclamation design criteria for restoration of channel crossings be added.

The definition of "diversion" does not include stream channel crossings, and OSMRE does not agree that the definition should be changed. Culverts, bridges, and fords are man-made structures that cross a stream and do not "divert" water to a channel in a new location. OSMRE does not agree that specific design criteria for restoration of stream channel crossings should be included in the final rule. The performance standards adopted today and other permanent program regulations, e.g. 30 CFR 816.43, are adequate to minimize environmental harm. Further, specific design criteria would limit the regulatory authority's flexibility in approving effective reclamation designs.

One commenter felt that the addition of low-water crossings to the list of structures that are allowed for stream crossings was not acceptable because of potential problems with erosion and increased sediment, and the fact that they are inundated by high flows. The commenter noted further that there is a need for detailed national standards for erosion prevention and sediment control.

OSMRE notes that the regulations require that the operator prevent erosion and sediment problems with low-water crossings. Final § 816.151(d)(6) specifically states that "the regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow." OSMRE agrees that by design, low-water crossings will be inundated during high flows which will restrict their use. OSMRE does not agree that this creates a problem except that it necessarily will cause the operator to alter mining operations to accommodate the inundation.

One commenter was concerned with the use of the word "prevent" in proposed § 816.151(d)(6) with respect to erosion associated with low-water structures. The commenter suggested that the word "prevent" be replaced by the word "control" because an operator cannot prevent erosion entirely.

OSMRE kept the word "prevent" in final § 816.151(d)(6) because by design, a low-water structure will be inundated during high-water flow periods, and this high-water flow will have greater velocities and erosion potential than during periods of low water. Therefore, the design, construction, and maintenance of low-water structures must prevent erosion of the structure and streambed during all anticipated flow conditions.

One commenter inquired if it was the intent of OSMRE to allow retention of low-water crossings as permanent structures.

OSMRE believes that the decision on retention of low-water crossings as permanent structures is the responsibility of the regulatory authority. This decision must consider the requirements of 30 CFR 816.133 and other associated permanent structure performance requirements.

Sections 816.151(e)/817.151(e) Surfacing

Final § 816.151(e) is identical to the proposed rule and requires that primary roads be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of trafic and the weight and speed of vehicles using the road. The final rule does not specify the kinds of materials which must be used for surfacing primary roads and does not list routine maintenance responsibilities for primary roads. Since the regulatory authority may approve only surfacing materials that meet the requirements of this section, it is not necessary to list the materials that may be used. The regulatory authority should have the flexibility to approve any material which will satisfy these requirements. The final rule establishes adequate maintenance requirements for all roads and, therefore, it is not necessary to establish separate requirements for primary roads. The regulatory authority may specify additional maintenance criteria for primary roads, as necessary.

One commenter was concerned that the requirements in proposed § 816.151(e) were too general. The commenter questioned if economics would be taken into account when the regulatory authority comes to a decision on the type of material that will be "sufficiently durable." The commenter raised the possibility that appropriate surface materials may not be available at or near the mine site, and the costs to obtain the required materials could be prohibitive. Two commenters argued that proposed § 816.151(e) was a "blanket" surfacing requirement that would, in every case, require some type of additional surface material. The commenters contended that, in many instances, the natural surface of the road may be sufficient to meet the performance standards. The commenters suggested that the language in § 816.151(e) be changed by taking out the phrase "approved by the regulatory authority."

OSMRE does not foresee that a regulatory authority would take economics into account in approving road surfacing material. In the first place, the regulatory experience OSMRE has accumulated over the past ten years indicates that durable surfacing material is usually present in sufficient quantities at the vast majority of coal mining operations, particularly when used in association with periodic chemical treatment to maintain a compacted, dust-free surface. Secondly, the purpose of the provision is to protect the environment, that is, to ensure that the road surfacing material is sufficiently durable to avoid problems with excessive dust and erosion due to breakdown of the road surface. While OSMRE agrees that, in some instances, the natural surface of the road may be sufficient to meet the performance standards, the commenter's suggested change was not accepted. Final § 816.151(e) does not preclude the acceptability of the natural road surface in meeting the durability requirement.

One commenter objected to the lack of a justification for the requirement to have the surface materials approved in advance.

OSMRE believes that the regulatory authority must review the type of surface material proposed for the construction of each primary road prior to the construction of the road. From a practical standpoint, prior approval will ensure that environmental damage does not result from surfacing with substandard material, and will avoid the problems and costs associated with having to remove any substandard material and/or resurface the road.

H. References

In addition to the literature cited with previous rulemakings on this subject (43 FR 41739, September 18, 1978; 44 FR 15245, March 13, 1979; and 47 FR 16595, April 16, 1982) which was used as general background material, the following items were used in the preparation of this final rule:

Ambrose, R.E., C.R. Hinkle, and C.R. Wenzel, 1983, Practices for protecting and enhancing fish and wildlife on coal surface-mined lands in the Southcentral U.S., U.S. Department of the Interior, Fish and Wildlife Service, FWS/OBS–83/11, 229 pp.

Kaufman, W.K. and J.C. Ault, 1977, Design of Surface Mine Haulage Roads—A Manual, U.S. Department of the Interior, Bureau of Mines, Information Circular No. 8758, 68 pp.

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1983, Proposed revisions to the Permanent Program Regulations Implementing section 501(b) of the Surface Mining Control and Reclamation Act of 1977, Final Environmental Statement, OSM–EIS–1: Supplement, 3 vols.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

The rule applies through cross-referencing, to those states with Federal progams. This includes California (as of August 12, 1988; 53 FR 26570, July 13, 1988), Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule also applies, through cross-referencing, to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual states will be notified in accordance with the provisions of 30 CFR 732.17.

Executive Order 12291

The Department of the Interior has examined this final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that this is not a major rule and does not require a regulatory impact analysis. The final rule will impose only minor costs on the coal industry and coal consumers because it emphasizes the use of performance standards instead of design criteria which will allow operators to use the most cost-effective means of achieving the minimum standards.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities. The funds that a small operator will have to invest in the construction of roads to comply with this final rule will only be minimally increased over what would normally be spent to ensure efficient transportation and minimal vehicle damage. The cost of building roads will be defrayed by lowered maintenance costs for roads and vehicles. The operator will also avoid losses from a shutdown of operations due to impassable roads.

Federal Paperwork Reduction Act

The information collection requirements contained in §§ 780.37 and 780.38 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0036. The information collection requirements contained in §§ 784.24 and 784.30 have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0039.

Public reporting burden for this information is estimated to average as follows: § 780.37—17.0 hours, § 780.38—12.0 hours, § 784.24—9.7 hours, and § 784.30—12.0 hours, per response, including the timre for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

National Environmental Policy Act

OSMRE has prepared an environmental assessment and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSMRE Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC.

Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSMRE must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Authors

The authors of this rule are Robert A. Wiles, P.E., and Donald E. Stump, Jr., P.E., with assistance from Patrick W. Boyd; OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 815

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 780, 784, 815, 816, and 817 are amended as set forth below:

Dated: September 14, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100–34.

§ 701.5 [Amended]

2. In § 701.5, the definition of *road* is reinstated and revised to read as follows:

* * * * *

Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

3. The authority citation for Part 780 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

4. Section 780.37 is revised to read as follows:

§ 780.37 Road systems.

(a) *Plans and drawings.* Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with § 816.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with § 816.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under § 816.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regulatory authority can maximize the protection of the stream in accordance with § 816.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 816.151(b) of this chapter.

5. Section 780.38 is added to read as follows:

§ 780.38 Support facilities.

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.181 of this chapter for each facility.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

6. The authority citation for Part 784 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

7. Section 784.24 is revised to read as follows:

§ 784.24 Road systems.

(a) *Plans and drawings.* Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with § 817.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with § 817.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under § 817.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regualtory authority can maximize the protection of the stream in accordance with § 817.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(b) of this chapter.

8. Section 784.30 is added to read as follows:

§ 784.30 Support facilities.

Each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 817.181 of this chapter for each facility.

PART 815—PERMANENT PROGRAM STANDARDS—COAL EXPLORATION

9. The authority citation for Part 815 is revised to read as follows:

Authority: Pub. L. 95–87, U.S.C. 1201 *et se.*, as amended; and Pub. L. 100–34.

10. Section 815.15 is amended by revising paragraph (b) to read as follows:

§ 815.15 Performance standards for coal exploration.

* * * * *

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§ 816.150 (b) through (f), 816.180, and 816.181 of this chapter.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

11. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

12. Section 816.150 is reinstated and revised to read as follows:

§ 816.150 Roads: general.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is–

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress;

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111 through 816.116 of this chapter.

12. Section 816.151 is reinstated and revised to read as follows:

§ 816.151 Primary roads.

Primary roads shall meet the requirements of section 816.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety Factor.* Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 780.37(c) of this chapter.

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords or perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable § 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.

(2) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

13. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

14. Section 817.150 is reinstated and revised to read as follows:

§ 817.150 Roads: general.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approval postmining land use.

(3) An ancillary road is any road not classified as a primary road

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or otheir habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standard applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 817.41 through 817.43 and 817.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority;

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111 through 817.116 of this chapter.

15. Section 817.151 is reinstated and revised to read as follows:

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor, with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety Factor.* Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 784.24(c).

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

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Tuesday
November 8, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 280

Nehemiah Housing Opportunity Grants Program; Notice of Proposed Rulemaking and Notice of Concurrent Delegation of Authority

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 280

[Docket No. R-88-1403; FR-2478]

Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the Act) establishes the Nehemiah Housing Opportunity Grants Program (NHOP). Title VI authorizes HUD to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. The loans to the family: May not exceed $15,000; bear no interest; are secured by a second mortgage held by the Secretary; and are repayable to the Secretary upon the sale, lease or transfer of the property. This Notice announces the proposed rules to govern the NHOP program.

DATE: Comments are due January 9, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6720. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

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 this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing 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.

I. Background

On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100-242)(the Act). Title VI of the Act establishes the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program.

The purposes of NHOP are:

—To encourage homeownership by families who are not otherwise able to afford homeownership.

—To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods.

—To increase the employment of residents of such neighborhoods.

II. Procedural Matters

Section 611 of the Act provides: "Not later than July 1, 1988, the Secretary shall issue final regulations to carry out the provisions of this title." This section also makes the notice and comment rulemaking requirements of the Administrative Procedure Act applicable to NHOP. Since no appropriations were made for NHOP for FY 1988, the Department did not attempt to meet section 611's deadline.

The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) appropriated $20 million for the Nehemiah program. These funds will not become available until July 1, 1989. HUD intends to have a final rule published and effective by that date.

III. Program Description

As more fully described below, nonprofit recipients under the proposed rule would be selected in a funding competition using cited threshold and ranking criteria. Following the selection of a program, HUD would obligate sufficient amounts to cover the aggregate amount of the loans proposed for the program and the recipient would begin the development and marketing of the project. (Other than model display units, however, no construction or substantial rehabilitation may begin until 25 percent of the homes in the program are contracted for sale to purchasers who intend to live in the homes, and required downpayments have been made to the recipient.)

Within 30 days of the date of the execution of a contract for the sale of a home to an eligible family, HUD would provide to the recipient from the obligated funds, an amount equal to the loan to be made to the family to purchase the home. This amount would be used by the recipient to provide a loan to the family to purchase the home. The loan would be secured by a second mortgage on the property; may not exceed $15,000; would bear no interest; and would be repayable to HUD upon the sale, lease or other transfer of the property.

A. Assistance Provided

Under NHOP, HUD would provide assistance in the form of grants to nonprofit recipients. Recipients must use the assistance to provide loans to families purchasing homes constructed or substantially rehabilitated under an approved program. The amount of assistance could not exceed $15,000 for each home.

Recipients must be nonprofit organizations. The proposed rule (§ 280.5) defines nonprofit organization as a private nonprofit corporation or other private nonprofit legal entity that: (1) Is not controlled by or under the direction of, persons or firms seeking to derive profit or gain from the organization, (2) has voluntary board, (3) has a tax exemption ruling from the Internal Revenue Service. This definition would exclude a public body or the instrumentality of any public body.

Except for assistance made available under the Community Development Block Grant program under Title I of the Housing and Community Development Act of 1974, (42 U.S.C. 5301, *et seq.*), recipients of NHOP assistance would not be eligible for assistance under other HUD assistance programs. (Homes purchased with loans under NHOP, however, would be eligible for mortgage insurance under the programs described at § 280.103.)

B. Program Eligibility Requirements

1. *Construction or substantial rehabilitation of homes.* Assistance under NHOP is limited to programs that involve the construction or substantial rehabilitation of homes. Under section 602(2) of the Act, the term "home" is defined to mean any one- to four-family dwelling. The term includes any dwelling unit in a condominium project or cooperative project consisting of not more than four dwelling units, any townhouse, and any manufactured home. Proposed § 280.5 reflects this statutory definition.

Proposed § 280.5 provides that rehabilitation means labor, material, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing buildings, security devices, and improvements through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings. A home would be substantially rehabilitated if the rehabilitation costs are in excess of 60 percent of the maximum sales price of the home, or if the home to be rehabilitated is a vacant, abandoned structure. (See section 602(8) of the Act.)

2. *Program size requirements.* Programs under NHOP must be of a sufficient size to create a major impact on the distressed neighborhood; to withstand the forces of deterioration that would surround the redeveloped neighborhood; and to obtain other advantages such as economies of scale in the building process, reduced costs of compliance with local regulations, and reduced per unit legal, architectural, engineering and selling costs. H. Rep. No. 100–122, 100th Cong. 1st Sess. 95–96, 97 (1987) and S. Rep. No. 100–21, 100th Cong. 1st Sess. 23 (1987). Accordingly, section 606(e)(1) of the Act provides that a program may be approved only if the program meets minimum size limitations, based upon the number of existing dwelling units in the unit of general local government that provides the most assistance to the program.

These program size requirements are reflected in proposed § 280.105(a), which states that the minimum number of homes in the program is: 250, if the unit of general local government has more than 100,000 existing dwelling units; .25 percent of the number of existing dwelling units in the unit of general local government, if the number of existing dwelling units is between 20,000 and 100,000; or 50 homes, if the unit of general local government has less than 20,000 existing dwelling units.

For the purpose of determining which unit of general local government provides the most assistance, HUD would consider both financial and other contributions to the program. Contributions are defined as financial or other contributions that result in program cost reductions that will be reflected in the sales price of homes purchased under the program, or that result in the reduction of carrying charges to families purchasing homes under the program. Contributions may include cash contributions to the program; the waiver or modification of construction, development or zoning requirements; the provision of no-interest construction loans; "in kind" donations of land, structures, equipment, materials and supplies; home loan programs that provide below-market interest rates, or principal or interest payment reductions, to families purchasing homes under the program, and property tax abatement to families purchasing homes under the program. Contributions exclude the time or services contributed by volunteers, and contributions provided with funds obtained through a Federally assisted program, except for contributions made available under the Community Development Block Grant Program.

For the purpose of computing the number of existing dwelling units located within a unit of general local government, HUD would use the number of "housing units" in the unit of general local government, as reported in the most recent decennial Census. Housing unit as used in the Census includes a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, or if vacant, intended for occupancy as separate living quarters. HUD would use the Census number, unless the applicant submits a revised estimate and supporting documentation demonstrating that the number of housing units has changed significantly since the most recent decennial Census.

Projects of the size required under the statute may be difficult to develop under certain circumstances (for example, in cities where there is little vacant or government-owned land, or where a different type of development may be more appropriate). See H. Rep. 100–122, 100th Cong. 1st Sess. 97 (1987). To address such situations, section 606(e)(1) permits the Secretary to waive the project size limitations if the Governor of the State or the unit of general local government requests the waiver and certifies, with supporting documentation, that the requirements would prevent the State or the unit of general local government from using the program effectively.

Proposed § 280.105(b) provides that HUD will determine that the project size requirement would prevent the effective use of the program where: (1) The projected market demand for homes, the amount of reasonably available land or structures, the available financial and other contributions, or the available mortgage financing is insufficient to support a program of the size required; (2) the construction or substantial rehabilitation of a project of the size proposed will result in cost reductions through economies of scale similar to the cost reductions achieved through other programs eligible for NHOP assistance; and (3) the program, by itself or together with other improvement efforts, will result in a substantial improvement in the overall quality and long term viability of the neighborhood. (Programs for which the size requirements have been waived would be subject to all other program requirements.)

3. Program Location

(a) *Neighborhood requirements.* Section 606(e)(4) of the Act provides that all homes constructed or substantially rehabilitated under NHOP must be concentrated in a single neighborhood and located on contiguous parcels of land. Proposed § 280.110(b) implements this requirement. For the purposes of this program, "neighborhood" would be defined to mean an area that (a) has a population of at least 2,500 persons, and (b) is distinguishable from other areas on the basis of one or more significant features, such as: (1) Natural or man-made boundaries; (2) a locally recognized name, formal or informal; (3) an identity as a residential subdivision; (4) an identity as an elementary school district; or (5) distinctive population, social, or housing characteristics. Contiguous parcels of land would mean parcels of land that abut, or if the parcels of land do not abut, parcels of land that are divided only by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions) and

that are located within the same neighborhood. (See proposed § 280.5).

Section 606(e)(4) permits homes to be constructed or substantially rehabilitated in up to four identifiable neighborhoods, each of which consists of contiguous parcels of land, if certain requirements are met. In accordance with this section, proposed § 280.110(b)(2) would permit approval of such programs if: (1) Each unit of general local government in which the program is located certifies that land cannot be made available, at a reasonable cost, in a single neighborhood for a program of the size required; (2) the applicant demonstrates that substantial rehabilitation and construction in the neighborhoods would result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs under NHOP (including economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering, and sales costs); and (3) the applicant demonstrates that the program, by itself or together with other improvement efforts that are or will be undertaken in the neighborhoods (such as the construction or rehabilitation of other structures, improvements to facilities or services, or expansion of private enterprise in the neighborhood), would result in a substantial improvement in the overall quality and long-term viability of the neighborhood.

(b) *Census tract or neighborhood income limitations.* Two purposes of NHOP are to rebuild distressed neighborhoods and to promote homeownership for families who would not otherwise be able to purchase a home. The program would accomplish these purposes by two forms of targeting. The first is contained in section 606(e)(3) of the Act, which restricts home development to Census tracts (or identifiable neighborhoods within Census tracts) in which the median family income is not more than 80 percent of the median family income for the area. See S. Rep. No. 100–21, 100th Cong. 1st Sess. 22 (1987). This requirement is included in the proposed rule at § 280.110(a). (The second form of targeting is the family income limitation, discussed below.)

Section 606(e)(3) provides that "median family income" and "area" (as determined for the purposes of assistance under section 8 of the United States Housing Act of 1937) are to be used to determine whether a program meets the median family income requirements. Proposed § 280.110(a)(1) would implement this requirement, except that this section would refer directly to median family income reported in the most recent decennial Census, since HUD uses this Census data for determining median family income under the Section 8 program.

For the purposes of determining the median family income for the Census tract, HUD would use the most recent decennial Census data, but would provide applicants with an opportunity to demonstrate that the median family income for the Census tract, as reported in the most recent decennial Census, does not reflect the current median family income for the tract. Since the Census does not provide median family income on a "neighborhood" basis, if homes are located in a Census tract that does not meet the median family income limitation stated above, the applicant would be required to demonstrate that the neighborhood meets the requirement. The evidence required to make such a showing is discussed at § 280.100(a)(3).

(c) *Location in MSA.* Section 605(b) of the Act contains the eligibility requirements for families purchasing homes under NHOP. Section 605(b)(1)(A) provides that the family must meet certain income requirements based upon the median family income for a family of four persons in the metropolitan statistical area involved. HUD believes that this family income requirement imposes a requirement that all programs be located in a metropolitan statistical area. This requirement is included in § 280.110(c) of the proposed rule.

4. *Home quality standards.* Proposed § 280.115 reflects the home quality standards contained in section 606(e)(2) of the Act. Proposed § 280.115(a) addresses home quality standards for homes constructed or substantially rehabilitated under this part (except manufactured homes). Such homes must comply with applicable local building code standards. If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CABO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD. Homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR Part 200, Subpart S.

Section 606(e)(2) provides that manufactured homes must comply with the standards prescribed under Title VI of the Housing and Community Development Act of 1974 (24 CFR Part 3280—Manufactured Home Construction and Safety Standards), the installation, structural and site requirements that would apply under title II of the National Housing Act (24 CFR 203.43f), and the energy performance requirements prescribed in accordance with section 203(b) of the National Housing Act (24 CFR 200.926d(e)). These requirements are contained in the proposed rule at § 280.115(b).

C. Application and Selection Process

1. *Notice of fund availability.* Proposed § 280.200 states that HUD will periodically publish a notice of fund availability in the **Federal Register**. This section describes the contents of the notice.

2. *Application requirements.* Under § 280.205, applicants would be required to submit applications in the form and within the time periods established by HUD. This proposed section includes the minimum application requirements. As required by section 606(b) of the Act, this proposed section includes a requirement that applicants submit a schedule for completion of the proposed program which has been agreed to by each unit of local government in which the program is to be located.

3. *Other Federal requirements.* Section 280.207 would address other Federal requirements applicable to recipients. These include nondiscrimination and equal opportunity requirements, flood insurance purchase requirements, requirements of OMB Circulars governing the acceptance and use of assistance by nonprofit organizations, conflict of interest prohibitions, provisions applicable to the use of debarred, suspended or ineligible contractors and audit requirements.

This section would address the requirements implementing the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846). The proposed requirements are similar to the lead-based paint requirements for HUD programs involving the rehabilitation of structures (e.g., Section 8 Existing Housing, the Rental Rehabilitation Grant Program, and the Community Development Block Grants Program), with modifications necessary to reflect the requirements of NHOP. The proposed rule includes the construction cut-off date requirements and revised definitions of applicable surfaces that were included in section 566 of the 1987 Act, and contained in a final rule revising HUD programs, published June 6, 1988 (53 FR 20790).

Most activities under NHOP are not covered under the Uniform Relocation Assistance and Real Property

Acquisition Policy Act of 1970 (Uniform Relocation Act) (42 U.S.C. 4601) because NHOP recipients will be nonprofit organizations rather than Federal agencies, States or State agencies. (It is possible, however, that a contribution of structures or land made by a local government to a program could be covered under the Uniform Relocation Act.) The Uniform Relocation Act was amended in the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987). Effective April 2, 1989, certain relocation assistance requirements will apply to programs or projects that involve acquisition, rehabilitation, or demolition, and that receive Federal financial assistance. HUD, with the Department of Transportation as the lead agency, is participating in the preparation of uniform regulations for Federal and Federally assisted programs. The final rule will address the applicability of the Uniform Relocation Act, and will include appropriate relocation provisions implementing the 1987 amendments.

4. *Selection process.* Under NHOP, HUD will use a three-step selection process. The three steps consist of the following stages:

(a) *Threshold review (Section 280.215).* In this stage, HUD would review all applications, to determine whether they meet stated threshold criteria. The criteria are:

—The application must be on the application form prescribed by HUD and filed within the time periods established in the NOFA.

—The applicant must demonstrate that it is a nonprofit organization; is financially responsible; has the ability to carry out activities under the program within a reasonable time after the execution of a grant agreement with HUD, and in a successful manner; and has the legal authority to participate in the program.

—The program must meet requirements governing program size, program location, home quality and the sales contract.

—The applicant must demonstrate that there is a demand among eligible purchasers for homes in the metropolitan statistical area, and that this demand is sufficient to ensure the sale of all homes under the proposed program.

—The applicant must demonstrate that it has consulted with, and has received the support of, residents of the neighborhood in which the program is located, and that each unit of local government has approved the program.

—The program must be financially feasible.

—The applicant must demonstrate that it has site control; and that the use of the proposed site is permissible under applicable zoning and other regulations, or that there is a reasonable basis to believe that proposed zoning actions will be completed successfully within four months of the submission of the application.

—HUD would assess the environmental effect of the application. Applications that require an Environmental Impact Statement would not be eligible for ranking.

(b) *Ranking criteria.* In the second stage of the selection process, HUD would evaluate the applications that pass threshold review and place these applications in a rank order based on six ranking criteria. The criteria listed in the regulations reflect the statutory selection factors found at section 607 of the Act. The criteria are:

—Contributions of land. Under this criterion, HUD would consider the extent to which public or private entities will contribute land necessary to make the program feasible. Land necessary to the feasibility of the program would include individual lots for homes constructed or substantially rehabilitated under the program.

—Other contributions. HUD would consider the extent to which financial and other contributions to the program will reduce the cost to families purchasing homes constructed or substantially rehabilitated under a program.

—Cost effectiveness. Under this third criterion, HUD would consider the degree to which each program will produce the maximum number of homes for the least amount of assistance under NHOP, taking into consideration cost differences between different market areas. Cost adjustments will be made by the application of a commercial construction cost index selected by HUD and announced in the notice of fund availability.

—Neighborhood blight. HUD would consider the degree of physical and economic blight in the neighborhoods in which the program is located. In determining the degree of physical blight, HUD will consider the condition (but not the age) of existing housing, other buildings and the infrastructure of the neighborhood. In determining the degree of economic blight, HUD will consider such factors as the unemployment rate, median family income and the crime rate in the neighborhoods. Because one of the major purposes of NHOP is to rebuild the depressed areas of the cities of the United States and to create sound and attractive neighborhoods, HUD would also consider the impact that the proposed program, together with other improvement efforts that are or will be undertaken in the neighborhood by units of general local government or private entities, will have on the quality and viability of the neighborhood.

—Construction cost. Under the fifth criterion, HUD would consider the degree to which the applicant will use construction or rehabilitation methods that would reduce the cost per square foot for the proposed program below the average construction cost per square foot in the market area involved. HUD will compare the average construction costs for the market area (determined by reference to a commercially available publication selected by HUD and announced in the notice of fund availability) with the average construction or rehabilitation costs for the program (adjusted for cost reductions that are attributable solely to financial and other contributions to the program).

—Local resident involvement. Under the final statutory criterion, HUD is required to consider the extent to which each program provides for the involvement of local residents in the planning, construction and rehabilitation of homes. One of the major purposes of NHOP is to increase the employment of neighborhood residents. Accordingly, one of the factors that HUD will consider under this criterion is the degree to which residents of the neighborhood will be employed in the construction and substantial rehabilitation of homes in the program. Additionally, since successful programs are best developed with the involvement of local residents of the neighborhood who have an understanding of the needs and characteristics of the neighborhood and a substantial stake in the improvement of the neighborhood, HUD will also consider the extent to which local residents of the neighborhood have advised or assisted the applicant in the development of the proposed program, and the likelihood of continued participation by local residents in program activities following selection.

Section 280.220(c) provides an exception to the ranking process based on section 607(b) of the Act. To the extent that State and local governmental entities are prohibited by State law from making a financial or other contribution to the program that would otherwise be eligible for consideration under the first or second ranking criterion, HUD would not penalize an applicant under the

ranking process for the lack of such a contribution to the program.

(c) *Final selection.* In the final stage of the selection process, HUD would select for funding the highest-ranked applications under the ranking criteria. To ensure reasonable variety in the program, HUD would reserve the right to substitute one or more other highly-ranked applications, if the highest-ranked applications involve programs that would predominately serve one geographic area. Upon completion of final selection, HUD will notify each successful applicant of its selection. HUD will also notify each unsuccessful applicant that it has not been selected, and will provide the unsuccessful applicant with an explanation for the denial of the application.

D. Program Operation

1. *Obligation of funds.* When HUD selects an application for funding, it would obligate sufficient amounts for the recipient's grant to cover the aggregate amount of loans proposed under the selected program. (Proposed § 280.300).

2. *Grant agreement.* The responsibilities of the recipient under NHOP would be incorporated in a grant agreement executed by HUD and the recipient and HUD would monitor the recipient's performance to determine if the recipient is complying with the requirements of the grant agreement. (See § 280.303).

3. *Minimum participation.* Section 606(c) of the Act provides that no nonprofit organization receiving assistance under NHOP may commence any construction or substantial rehabilitation until not less than 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes, and the required downpayments are made. An exception is made for the construction or substantial rehabilitation of display homes. Section 280.305 would incorporate these requirements and specify that the maximum number of display homes that may be constructed or substantially rehabilitated is five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes if the program involves less than 60 homes.

4. *Eligible purchasers.* Under section 605(b) of the Act, each family purchasing a home under Title VI must meet family income requirements and must not have owned a home during the three-year period preceding the purchase of the home. These requirements are included in proposed § 280.315.

Section 605(b) of the Act states that each family purchasing a home must have a family income on the date of purchase that does not exceed the higher of "the median income for a family of 4 persons in the metropolitan statistical area involved" (subject to a limited exception, discussed below) or "the national median income for a family of 4 persons." The language of the statute is troublesome, because data on median income for a family of four is not available. The decennial Census provides only median family income data, and does not provide median income data based on family size.

For programs under the United States Housing Act of 1937, HUD is required to develop lower income limits that are based on 80 percent of the median family income for an area. These median income limits are then adjusted for smaller and larger families. See section 3(b)(2) of the United States Housing Act of 1937. Currently, for most areas, the lower income limit for a family of four under these programs is set at 80 percent of the median family income. (*I.e.* Under these programs, the median family income adjusted for a family of four is equal to median family income.) In light of the lack of data for median income for a family of four, the attached proposed rule at § 280.315 make a similar assumption and uses median family income as the income eligibility standard. HUD specifically requests public comment on this issue.

To purchase a home, the family's income may not exceed the higher of the national median family income or the median family income for the metropolitan statistical area involved. The statute permits the Department to modify the income standard for the metropolitan statistical area. The proposed rule permits the recipient to request such a modification at any time during the development of the program. To obtain a modification, the recipient must submit a request made by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD would permit up to 15 percent of the families that purchase homes under NHOP to have a family income on the date of purchase that is between 100 and 115 percent of the median family income for the metropolitan statistical area. (For the purposes of this program, the date of purchase would be defined as the date that a family executes a sale contract for the purchase of a home under NHOP.)

5. *Sales contract and downpayment requirements.* Under proposed § 280.320, the recipient and each family purchasing a home constructed or substantially rehabilitated under a program would be required to execute a sales contract containing appropriate terms and conditions covering the purchase of the home, the downpayment requirements and repayment provisions described below, and such other terms and conditions as HUD may require.

Congress recognized that downpayment requirements would provide a valuable incentive to save for families wishing to purchase a home, and would ensure that purchasers have some equity and thus a greater stake in the home's upkeep. (See H. Rep. No. 100–122, 100th Cong. 1st. Sess. 97 (1987)). Accordingly, section 605(c) of the Act requires that each family purchasing a home under NHOP to make a downpayment of 10 percent of the sales price of the home. This requirement is included in the proposed rule at § 280.320(b). To ensure that families will have a financial stake in the home, the proposed rule would also forbid government entities and instrumentalities from providing the funds for the family's downpayment.

Section 605(c) of the Act states that the recipient may require a downpayment of more than 10 percent, if it determines that a higher downpayment is appropriate, and may require a downpayment of less than 10 percent, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment. These requirements have been incorporated in the proposed rule.

The statute does not specify a date that the family must provide a downpayment. HUD anticipates that recipients may wish to require the downpayment at differing points of time, or may wish to permit families to accumulate their downpayments over a period of time. To provide the recipient with the greatest amount of discretion with regard to the date of the required downpayment, § 280.320(b)(2) would provide simply that the family make the downpayment on the date required by the recipient. This requirement is subject to § 280.305, which provides that no construction or rehabilitation may begin until at least 25 percent of the homes to be constructed or substantially rehabilitated under the program have been contracted for sale, and the downpayments have been made.

The statute requires the recipient to pay interest to the family on the downpayment from the date upon which the downpayment is made through the date of settlement, at a rate not less than the passbook rate. The proposed rule requires the recipient to deposit all downpayments in an account with a federally-insured bank or savings and loan institution. The amount of interest to be paid to the family would be the actual interest earned on the downpayment deposit. Under no circumstances would the interest rate paid to the family be lower than the lowest interest rate paid on time savings (passbook) deposits with a federally-insured bank or savings and loan institution which conducts business within the MSA. (See § 280.320(b)(3).)

6. *Loan requirements.* Proposed § 280.322(a) provides that each loan made under the part: (1) Must be secured by a second mortgage held by HUD on the property involved; (2) may not exceed $15,000; (3) will not bear interest; (4) is repayable to HUD upon the sale, lease, or other transfer of the property; (5) must be applied by the family to the purchase price of the home; (6) may not be used by the family to provide the downpayment required under § 280.230; and (7) is subject to such other terms and conditions as HUD may require. (See section 604(b).) Proposed § 280.322(b) states that HUD will provide the recipient with an amount equal to the amount of the loan within 30 days after the date of purchase of a home with a loan under this part.

7. *Repayment of loan.* As required by sections 604(b)(4) and 606(e)(5) of the Act, loans under NHOP are repayable upon the sale, lease, or other transfer of the property. The Senate Committee Report stated that the refinancing of the first mortgage will not require repayment, unless there is a related sale, lease or other transfer of the property. See S. Rep. No. 100–21, 100 Cong. 1st Sess. 23 (1987). This is reflected in proposed § 280.330(a) which states that the refinancing of the first mortgage will not require the repayment of the loan unless the refinancing is related to a sale, equity withdrawal, lease, or transfer of interest in the property. If an equity withdrawal is involved, the family would be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

Section 606(e)(5) of the Act provides that the Secretary may approve a transfer of the home without repayment. The Housing Committee report stated that the legislation anticipates that the Secretary will issue such approval only if the proceeds of a sale are insufficient to repay the full second mortgage. (H.R. Rep. No. 100–122, 100 Cong. 1st Sess. 96 (1987). Proposed § 280.330(b) provides that approval will be granted if HUD determines that an undue hardship would result from application of the repayment requirement and that such a finding will be made only if the proceeds of a sale are insufficient to repay the loan amount in full. Approval will be granted only to the extent that the proceeds of the sale are insufficient to repay the loan in full. In light of the leasing prohibition under section 605(d) of the Act, the proposed rule states that HUD will not approve a lease without repayment. To the extent that a sale or other transfer is approved by HUD, the second mortgage held by the Secretary would remain in force until the loan is repaid.

8. *Funding amendments and deobligation of funds.* Section 280.335 would contain provisions governing HUD's administration of the program. This section contains provisions addressing funding increases and the deobligation of funds.

E. Waiver

Section 280.10 would permit the Secretary of HUD, for good cause, to waive NHOP requirements that are not required by law.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(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 the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more: (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the number of recipients that will be funded under the program will be small and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was listed as Item No. 957 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41989) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Number is 14.179.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under setion 3504(h) of the Paperwork Reduction Act of 1980. The sections of the proposed rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—NEHEMIAH HOUSING OPPORTUNITY PROGRAM

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
1. Application Submission Requirements	§ 280.205; § 280.105 (b) & (C); § 280.110 (a) & (b); § 280.215(2) (i) & (iv), (b)(5) & (b)(7).	150	1	150	8.00	1,200
2. Affirmative Fair Housing Marketing Requirements.	§ 280.207(a)(6)	10	1	10	3 minutes	0.5

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—NEHEMIAH HOUSING OPPORTUNITY PROGRAM—Continued

Description of information collection requirement	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual response	Hours per response	Total hours
3. Racial and Ethnic Data Collection Requirement.	§ 280.207(a)(7)	10	145	1,450	3 minutes	43.5
4. Lead-Based Paint Reporting and Recordkeeping Requirement.	§ 280.207(d)	2	145	290	0.50	145
5. Grant Agreement	§ 280.303(a)	10	1	10	2.00	20
6. Request for Modification of Requirement for Eligible Buyers.	§ 280.315(a)	5	1	5	1.50	7.5
7. Sales Contract Requirement	§ 280.320(a)	10	145	1,450	0.50	725
8. Request for Reimbursement	§ 280.322(b)	10	145	1,450	0.50	725
9. Loan and 2nd Mortgage Requirement	§ 280.322(a)	10	145	1,450	0.50	725
10. Request for HUD Approval of Sale or Transfer.	§ 280.330(b)	10	45	450	1.50	675
Total Burden Hours						4,266.5

List of Subjects in 24 CFR Part 280

Grant program, housing and community development, Loan program, housing and community development, Low- and moderate-income housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations would be amended to add a new Subchapter E, consisting of Part 280, to Chapter II to read as follows:

SUBCHAPTER E—GRANT PROGRAMS

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

Subpart A—General

Sec.
280.1 Applicability and scope.
280.5 Definitions.
280.10 Waiver.

Subpart B—Assistance Provided

280.100 NHOP assistance.
280.103 Assistance under other HUD programs.

Subpart C—Program Eligibility Requirements

280.105 Program size.
280.110 Program location.
280.115 Home quality.

Subpart D—Application and Selection Procedures

280.200 Notice of fund availability.
280.205 Application requirements.
280.207 Other Federal requirements.
280.210 Selection process.
280.215 Threshold requirements.
280.220 Ranking criteria.
280.225 Final selection.

Subpart E—Program Operation

280.300 Obligation of funds.
280.303 Grant agreement.
280.305 Minimum participation.
280.315 Eligible purchases.
280.320 Sales contract and downpayment requirements.
280.322 Loan requirements.
280.330 Repayment of loan.
280.335 Funding amendments and deobligation of funds.

Authority: Sec. 611, Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 280.1 Applicability and scope.

(a) *General.* Under the Nehemiah Housing Opportunity Grants Program (NHOP) contained in Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), HUD is authorized to provide assistance in the form of grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

(b) *Purpose.* The purpose of NHOP is:

(1) To encourage homeownership by families who are not otherwise able to afford homeownership;

(2) To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods; and

(3) To increase the employment of residents of such neighborhoods.

§ 280.5 Definitions.

As used in this part:

Applicant means a nonprofit organization that submits an application for assistance under this part. The term applicant does not include two or more entities submitting a joint application.

Assistance means grants to recipients for the purpose of providing loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approval program.

Contiguous parcels of land means parcels of land that abut, or if the parcels of land do not abut, parcels of land that are divided only by natural or man-made boundaries (such as streets, rights-of-way, or similar divisions) and that are located within the same neighborhood.

Date of purchase means the date that a family executes a sales contract for the purpose of a home under this part.

Financial and other contributions to the program means financial or other contributions that result in program cost reductions that will be reflected in the sales price of the homes purchased under the program, or that result in the reduction of carrying charges to families purchasing homes under the program. Such contributions include (but are not limited to) cash contributions to the program; the waiver or modification of construction, development or zoning requirements by units of general local government; the provision of no-interest or below-market interest construction loans; "in kind" donation of land, structures, equipment, materials and supplies; home loan programs that provide below market interest rates, or principal or interest payment reductions to families purchasing homes under the program; and property tax abatement offered by a State or a unit of general local government to families purchasing homes under the program. Such contributions do not include: the time or services contributed by volunteers, or contributions provided with funds obtained through a federally assisted program, except for contributions made available under the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*).

Home means a one- to four-family dwelling. Home includes dwelling units in a condominium project that consists of not more than four dwelling units, dwelling units in a cooperative project that consists of not more than four

dwelling units, townhouses, and manufactured homes.

HUD means the Department of Housing and Urban Development.

Metropolitan statistical area means a metropolitan statistical area or a primary metropolitan statistical area established by the Office of Management and Budget.

Neighborhood means an area that (a) has a population of at least 2,500 persons, and (b) is distinguishable from other areas on the basis of one or more significant features, such as:

(1) Natural or man-made boundaries;

(2) A locally recognized name, formal or informal;

(3) An identity as a residential subdivision;

(4) An identity as an elementary school district; or

(5) Distinctive population, social, or housing characteristics.

Nonprofit organization means a private nonprofit corporation or other private nonprofit legal entity. No part of the net earnings of the organization may inure to the benefit of any member, founder, contributor, or individual. The organization:

(a) May not be controlled by, or be under the direction of, persons or firms seeking to derive profit or gain from the organization;

(b) Must have a voluntary board; and

(c) Must have a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code.

Nonprofit organization does not include a public body or the instrumentality of any public body.

Program means the undertaking by a recipient with HUD assistance under this part for the construction or substantial rehabilitation of homes in accordance with the requirements of this part.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to carry out a program under this part.

Rehabilitation means labor, material, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings, security devices, and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means rehabilitation involving costs in excess of 60 percent of the maximum sales price of the home, or the rehabilitation of a vacant, uninhabitable structure.

Unit of general local government means a borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

§ 280.10 Waiver.

The Secretary of HUD may waive any requirement of this part that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and must be supported by documentation of the pertinent facts or grounds.

Subpart B—Assistance Provided

§ 280.100 NHOP assistance.

(a) *General.* HUD will provide assistance in the form of grants to recipients. Recipients may only use assistance provided by HUD under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

(b) *Amount.* The amount of assistance provided to any recipient under this part shall not exceed $15,000 for each home purchased by an eligible family under an approved program.

§ 280.103 Assistance under other HUD programs.

Except for assistance made available under the Community Development Block Grant program, a recipient's program is not eligible for assistance under other HUD assistance programs. Dwellings purchased under the program are eligible for mortgage insurance under section 203(b) (one- to four-family home mortgages), section 203(k) (rehabilitation of one- to four-family homes), section 221(d)(2) (low- and moderate-income families), section 234(c) (condominium mortgages), section 245(a) (graduated payment mortgages), and section 251 (adjustable rate mortgages) of the National Housing Act.

Subpart C—Program Eligibility Requirements

§ 280.105 Program size.

(a) *Number of homes.* The minimum number of homes that must be constructed or substantially rehabilitated under a program will depend on the number of existing dwelling units that are located in the unit of general local government that provides the greatest financial and other contributions to the program. The minimum number of homes is:

(1) 250, if there are more than 100,000 existing dwelling units in the unit of general local government;

(2) .25 percent of the number of existing dwelling units in the unit of general local government, if the number of existing dwelling units in the unit of general local government is between 20,000 and 100,000; or

(3) 50, if there are less than 20,000 existing dwelling units in the unit of general local government.

(b) *Exception.* HUD may waive the program size requirement in paragraph (a) of this section, if the chief elected official of the unit of general local government that provides the most financial and other contributions to the program, or the Governor of the State in which the program is to be located, requests a waiver and certifies, with supporting documentation, that the program size requirement will prevent the State or the unit of general local government from using the program effectively. HUD will determine that the program size requirement would prevent the effective use of the program if:

(1)(i) The projected market demand for the homes is insufficient to support a program of the size required;

(ii) Structures cannot be made available for rehabilitation and a sufficient amount of land cannot be made available for new construction, at a reasonable cost, to support a program of the size required.

(iii) The financial and other contributions available to the program are insufficient to support a program of the size required; or

(vi) The amount of mortgage financing available is insufficient to support a program of the size required;

(2) The construction or substantial rehabilitation of a project of the proposed size will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions include (but are not limited to) economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering and sales costs); and

(3) The program, by itself or together with improvement efforts that are or will be undertaken in the neighborhood by units of general local government or private entities, will result in a

substantial improvement in the overall quality and long-term viability of the neighborhood. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhood.

(c) *Number of dwelling units.* For the purposes of this section, the number of existing dwelling units in the unit of general local government means the number of housing units in the unit of general local government, as reported in the most recent decennial Census. HUD will use the Census number unless the applicant submits a revised estimate and supporting documentation demonstrating that the number of housing units has changed significantly since the most recent decennial Census.

§ 280.110 Program location.

(a) *Census tract or neighborhood income limitations.* All homes constructed or substantially rehabilitated under a program must be located in Census tracts, or in neighborhood (within Census tracts), in which the median family income does not exceed 80 percent of the median family income of the area in which the program is to be located. Median family income will be determined as follows:

(1) For the purpose of determining the median family income of the area in which the program is to be located, HUD will use median family incomes derived from the most recent decennial Census, and the areas established under Section 8 of the United States Housing Act of 1937.

(2) For the purpose of determining the median family income for Census tracts, HUD will use the tract definitions and median family income data reported in the most recent decennial Census, unless the applicant demonstrates that the Census data does not reflect the current median family income of the tract. The applicant must submit appropriate supporting documentation, including a revised estimate of median family income for the tract; an explanation of the methods used to compute the revised estimate; and a description of the social and economic changes causing the median family income change.

(3) If the homes are located in a Census tract that does not meet the median family income requirements, the applicant may demonstrate that the homes will be located in a neighborhood (within a Census tract) that meets these median family income limitations. The applicant must submit appropriate supporting documentation, including an estimate of the median family income for the neighborhood; an explanation of the methods used to compute the estimate; and a description of the social and economic factors that cause the median family income for the neighborhood to be less than the median family income of the Census tract. In computing neighborhood median family income, applicants should rely, to the extent practicable, on block group data reported in the most recent decennial Census.

(b) *Neighborhood requirements.* (1) Except as provided under paragraph (b)(2) of this section, all homes constructed or substantially rehabilitated under a program must be located in one neighborhood and must be located on contiguous parcels of land.

(2) Homes constructed or substantially rehabilitated under a program may be located in up to four neighborhoods, each of which consists of contiguous parcels of land, if the following requirements are met:

(i) Each unit of general local government in which the program is to be located certifies that land cannot be made available, at a reasonable cost, in a single neighborhood for a program of the size required under § 280.105.

(ii) The applicant submits evidence demonstrating that construction or substantial rehabilitation in the neighborhoods will result in cost reductions through economies of scale, comparable to the cost reductions achieved by other programs eligible for assistance under this part. (Such cost reductions may include economies of scale in the construction process, reduced costs of compliance with State and local laws and regulations, and reduced per unit legal, architectural, engineering and sales costs).

(iii) The applicant submits evidence demonstrating that the program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will result in a substantial improvement in the overall quality and long-term viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods.

(c) *Location in MSA.* All homes constructed or substantially rehabilitated under a program must be located within a metropolitan statistical area.

§ 280.115 Home quality.

(a) *Generally.* Except for manufactured homes, homes constructed or substantially rehabilitated under a program must comply with applicable local building code standards. (If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CBO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD). All such homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR Part 200, Subpart S.

(b) *Manufactured homes.* Manufactured homes under a program must comply with the Manufactured Homes Construction and Safety Standards in 24 CFR Part 3280, the installation, structural, and site requirements described in 24 CFR 203.43f, and the energy performance requirements of 24 CFR 200.926d(e).

Subpart D—Application and Selection Procedures

§ 280.200 Notice of fund availability.

HUD will periodically publish a Notice Of Fund Availability in the **Federal Register.** The Notice will:

(a) Explain how application packages providing specific application requirements and guidance may be obtained;

(b) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(c) State the amount of funding available under the Notice;

(d) Specify the maximum number of points that may be awarded under each of the ranking criterion described in § 280.220, and the commercial construction cost indices and data that will be used under ranking criteria described in § 280.220(b) (3) and (5).

(e) Provide other appropriate program information and guidance.

§ 280.205 Application requirements.

(a) *General.* Applicants must submit applications for assistance in the form and within the time periods established by HUD.

(b) *Application requirements.* At a minimum, HUD will require applications to include:

(1) Applicant data (identity, evidence of eligibility and capacity to carry out program activities, legal authority to submit the application and to participate in the program, and information necessary to demonstrate financial responsibility).

(2) A description of the proposed program, including:

(i) *The project location.* The applicant must identify the metropolitan statistical area, Census tracts, neighborhoods, and parcels of land where the program will be located. The applicant must demonstrate that program will be located in one neighborhood or must provide the information necessary to meet the requirements of § 280.110(b)(2). In addition, the application must include evidence demonstrating the extent of physical and economic blight in each neighborhood, must describe any improvement efforts undertaken or to be undertaken by units of general local government or private entities in the neighborhoods, and must describe the improvements in the quality and viability of the neighborhoods that will result from the proposed program and other efforts (see § 280.220(b)(4)).

(ii) *Number of homes.* The applicant must identify the number of homes that will be constructed or substantially rehabilitated under the program. If waiver of the program size limitation is sought, the application must include a waiver request and certification as described in § 280.105(b).

(iii) *Architectural drawings.* The application must include architectural drawings of the site, and floor plans for display homes to be constructed or substantially rehabilitated under the program.

(iv) *Substantial rehabilitation and construction.* The application must include a description of proposed construction and substantial rehabilitation. If the program involves substantial rehabilitation, the applicant must identify all existing structures that will be used in the program, describe the proposed rehabilitation activities, and demonstrate that the proposed rehabilitation activities will constitute substantial rehabilitation.

(v) *Compliance with home quality standards.* The applicant must certify that the proposed program will comply with the home quality standards contained in § 280.115.

(vi) *Compliance with site control and zoning requirements.* The applicant must demonstrate that the project will meet the site control and zoning threshold described at 280.215(b)(7).

(3) Project financial data. The applicant must provide specific information on project costs and financing including:

(i) Total project development costs.

(ii) Sources and applications of all funds that will be used in the development of the program.

(iii) The source and amount of financial and other contributions to the program. For financial and other contributions to the program that will be made by entities other than the applicant, the application must provide firm commitments to provide the contributions to the program. The firm commitment must demonstrate the source's binding commitment to provide the contribution and the date upon which the contribution will be made available. The commitment may be contingent upon the applicant's selection for funding under this part.

(A) If "in kind" contributions are made to the program, the application must include documentation supporting the valuation of the property. If real property is contributed, the supporting documentation must include an appraisal, acceptable to HUD, prepared by a real estate appraiser.

(B) If State or local government entities are prohibited from making a financial or other contribution to the program by State law, the application must identify the State law prohibiting the contribution.

(iv) Projected annual budget for each year until program completion.

(v) The amount of assistance requested under this part.

(4) Need. The application must include evidence of the demand for homes under the proposed program in the metropolitan statistical area. Housing demand may be demonstrated with a market analysis prepared by a reliable, knowledgeable source. Applicants are not required to submit commercially prepared market studies.

(5) A program schedule. The applicant must submit an estimated schedule for completion of the proposed program, including the dates of the commencement and completion of construction and substantial rehabilitation of any display homes; the date that homes will first be offered for sale; and the dates of the commencement and completion of construction and substantial rehabilitation of nondisplay homes. In addition, the applicant must submit evidence that each unit of local government in which the program is to be located has approved of the program schedule.

(6) Home sales description. The application must describe the applicant's home sales process, including the proposed marketing procedures, procedures for determining family eligibility, a copy of the proposed sales contract, the downpayment requirements, the projected sales price of homes, and settlement procedures. The application should indicate whether the applicant is seeking a modification of the family income limitations under § 280.315(a).

(7) Local participation. The applicant must demonstrate that the local consultation requirements of § 280.215(b)(5) have been met, and must provide a narrative statement describing the involvement of neighborhood residents in the development of the proposed program, the likelihood of continued neighborhood resident participation in program activities following selection of the program, and the planned employment of neighborhood residents in the construction or substantial rehabilitation of the program.

(8) Additional data.

(i) If the application states that the number of housing units in a unit of general local government has significantly changed since the most recent decennial Census, the applicant must provide the additional information described at § 280.105(c).

(ii) If the application states that the most recent decennial Census does not reflect the current median family income for a Census tract, the applicant must provide the additional information described in § 280.110(a)(2).

(iii) If the homes will be located in a Census tract that does not meet the median family income requirements of § 280.110(a), but the homes will be located in a neighborhood that does meet these requirements, the applicant must provide the additional information described in § 280.110(a)(3).

(9) Other data as prescribed by HUD.

§ 280.207 Other Federal requirements.

The applicant (or recipient) must assure that the following additional requirements are met:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to NHOP include:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Distrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities; and

(6) The affirmative fair housing marketing requirements at 24 CFR Part 200, Subpart M, and the implementing regulations at 24 CFR Part 108.

(7) Racial and ethnic data collection requirements. Recipients must maintain current and accurate data on the race and ethnicity of program beneficiaries.

(b) *Flood insurance purchase requirements.* Grants will not be provided to programs involving the acquisition or rehabilitation of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations under that program (44 CFR Parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards.

A recipient may not make a loan under this part involving buildings located in these areas unless flood insurance on the structure is obtained by the purchaser in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by nonprofit organizations.[1]

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as provided in paragraph (d)(2) of this section apply to the program.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and provides, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

Applicable surface means all interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(iii) In the case of a structure constructed or substantially rehabilitated before 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the inspection must be completed before initial occupancy of the structure.

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child under the age of seven years who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content must be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect residents of the structure from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must submit the test results and, if applicable, the certification of treatment to HUD which shall retain the records in the recipient's case file. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(3) The applicant or recipient, however, must ensure that the program sponsor carriers out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(e) *Conflicts of interest.* No person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to activities under the program or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities,

May obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. The provisions of paragraph (e)(1) of this section do not prohibit a non-managerial and

[1] These circulars are available from the Regulations Division, HUD, 451 7th Street, SW., Rm. 10276, Washington, DC 20410.

nonsupervisory employee who is otherwise eligible, from purchasing a home under this part.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* Recipients are subject to the audit requirements of OMB Circular A–110.[2] HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The prevailing wage rate determinations under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to the program.

§ 280.210 Selection process.

The selection process for applications for assistance under this part has three stages:

(a) The threshold stage (see § 280.215);

(b) The ranking stage (see § 280.220d); and

(c) The final selection stage (see § 280.225).

§ 280.215 Threshold requirements.

(a) *General.* To be eligible for evaluation under the ranking criteria set out in § 280.220, applications must meet each of the threshold criteria described below. Applications that fail to meet all threshold criteria will not be eligible for assistance under this part.

(b) *Threshold criteria.* The threshold criteria are:

(1) *Form, time and adequacy of the application.* The application must be filed in the application form prescribed by HUD under § 280.205, and within the time period established by HUD in the notice of funds availability under § 280.200.

(2) Applicant—(i) *Eligibility to receive assistance.* The applicant must demonstrate that it is a nonprofit organization. An applicant will meet this threshold requirement if it demonstrates that it applied for a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code before the submission of its application. However, assistance will not be provided until an effective tax exemption ruling has been issued by the Internal Revenue Service.

(ii) *Financial responsibility.* The applicant must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider the applicant's ability to maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

(iii) *Capacity.* Each applicant must demonstrate that it has the ability to carry out activities under the program within a reasonable time after execution of the grant agreement with HUD, and in a successful manner. In making this determination, HUD will consider the extent and quality of the applicant's past experience in developing or administering programs similar to the proposed program. HUD will also consider the ability of applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and administration of the proposed program.

(iv) *Legal authority.* Each applicant:

(A) Must demonstrate that it has the legal authority to participate in the program and to carry out activities in accordance with program requirements, and the requirements of other applicable Federal law.

(B) Must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the application under this part.

(3) *Program eligibility.* The applicant must demonstrate that the program meets the program size, location and home quality requirements described under Subpart C of this part, and that the sales contract will meet the requirements described at § 280.320.

(4) *Need.* The applicant must demonstrate that there is a demand for homes in the metropolitan statistical area among eligible purchasers and that this demand is sufficient to ensure the sale of all homes constructed or substantially rehabilitated under the program.

(5) *Local consultation requirements.* (i) The applicant must demonstrate that is has consulted with, and received the support of, residents of the neighborhood in which the program is to be located. At a minimum, the applicant must demonstrate that it provided a description of the program to the residents of the neighborhood and requested their comments on the proposal. The method used by the applicant to furnish information to the residents must be designed to ensure that all residents receive actual or constructive notice of the program description and the request for comments. Support of the residents may be demonstrated by such documents as a summary of all comments received to the request, the transcript of any public meeting, and affidavits of support submitted by local residents of the neighborhood.

(ii) The applicant must also submit a written statement signed by the chief elected official of each unit of general local government in which the program is to be located, stating that the unit of general local government approves of the proposed program.

(6) *Financial feasibility of the program.* The applicant must demonstrate that the proposed program is financially feasible. In determining financial feasibility, HUD will consider:

(i) The sources and amounts of financial or other resources that will be used to carry out the program (including the availability of financial and other contributions to the program); and

(ii) The total projected program costs.

(7) *Siting and zoning.* Applicants must meet the following siting and zoning requirements at the time of the application:

(i) The applicant must demonstrate that it has control of the site involved. The applicant must demonstrate that it owns or has an option to purchase the properties involved, or has a long-term lease or has an option on a long-term lease on such properties.

(ii) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully within four months following the submission of the application.

(8) *Environmental review.* (i) HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), HUD's implementing regulations at 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601). Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not be eligible for assistance under this part.

(ii) The environmental review may reveal information not contained in the application that may have relevance to

[2] This circular is available from the Regulations Division, HUD, 451 7th Street, SW., Rm. 10276, Washington, DC 20410.

the selection process. HUD will consider such relevant information under the appropriate threshold and ranking criteria.

§ 280.220 Ranking criteria.

(a) *In general.* Applications that fulfill each of the threshold requirements of § 280.215 will be assigned a rating score and will be placed in ranked order, based upon the criteria described in paragraph (b) of this section. The number of points that will be awarded under each ranking criterion will be announced in the Notice Of Fund Availability under § 280.200.

(b) *Criteria.* The ranking criteria are:

(1) *Contributions of land.* (i) HUD will consider the extent to which public and private entities will contribute land necessary to make the program feasible. To be considered under this criterion, the contribution of land must meet the definition of financial and other contributions to the program as described in § 280.5.

(ii) For the purposes of this criterion, land is necessary to the feasibility of the program if the land is used to provide individual lots for homes constructed or substantially rehabilitated under the program. Other contributions of land, such as land that will be used for parks, green spaces, or lots to support community facilities, are not necessary to the feasibility of the program and will not be considered under this criterion. Such contributions, however, may be considered if the requirements of paragraph (b)(2) of this section are met.

(iii) HUD will award the maximum number of points to applications that involve programs for which all land necessary to the feasibility of the program will be contributed from such sources.

(2) *Other contributions.* HUD will consider the extent to which financial and other contributions to the program will reduce the cost to families purchasing homes constructed or substantially rehabilitated under the program. (Donations of land will not be considered under this criterion to the extent that such donations are considered under paragraph (b)(1) of this section.) HUD will assign the maximum number of points under this criterion to applications that involve financial and other contributions to the program that will result in the greatest reduction in purchase price and carrying charges to families purchasing homes constructed or substantially rehabilitated under the program.

(3) *Cost effectiveness.* HUD will consider the degree to which each program will produce the maximum number of homes for the least amount of assistance under this part, taking into consideration cost differences among different metropolitan statistical areas. For each application, HUD will:

(i) Adjust the amount of requested assistance to eliminate cost differences between metropolitan statistical areas by applying a commercial construction cost index selected by HUD and announced in the Notice Of Fund Availability under § 280.200; and

(ii) Divide the adjusted assistance by the number of homes to be constructed or substantially rehabilitated under the program.

Applications that have the smallest adjusted assistance average will receive the maximum number of points under this criterion.

(4) *Neighborhood blight.* (i) HUD will consider the degree of the physical and economic blight in the neighborhoods in which the program is located. In determining the degree of physical blight, HUD will consider the condition (but not the age) of existing housing, other buildings, and the infrastructure in the neighborhoods. In assessing the degree of economic blight, HUD will consider such factors as the unemployment rate, median family income and crime rate in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate the greatest degree of physical and economic blight.

(ii) HUD will also consider the impact that the proposed program, by itself or together with improvement efforts that are or will be undertaken in the neighborhoods by units of general local government or private entities, will have upon the quality and viability of the neighborhoods. Other improvement efforts may include the construction or rehabilitation of other structures, improvements to public facilities or services, or the expansion of private enterprise in the neighborhoods. HUD will assign the maximum number of points under this factor to applications that demonstrate that the program, by itself or together with other improvement efforts, will result in a substantial improvement in the overall quality and long-term viability of the neighborhood.

(5) *Construction cost.* HUD will consider the degree to which the applicant will use construction or rehabilitation methods that will reduce the cost per square foot for the proposed program below the average construction cost per square foot in the metropolitan statistical area involved. HUD will determine:

(i) The average construction cost per square foot in the metropolitan statistical area of the proposed program by referring to a commercially available publication issuing construction cost data for the metropolitan statistical area (the construction cost publication will be selected by HUD and announced in the notice of fund availability under § 280.200); and

(ii) The average construction or rehabilitation cost per square foot of the program (as adjusted for cost reductions that are attributable solely to financial and other contributions to the program).

HUD will award the maximum number of points under this criterion to the applications in which the average adjusted cost per square foot for the program is the smallest percentage of the average construction cost per square foot in the metropolitan statistical area.

(6) *Local resident involvement.* HUD will consider the degree to which the program provides for the involvement of local residents of the neighborhood in the planning and construction or substantial rehabilitation of homes. Under this criterion, HUD will consider:

(i) The extent to which residents of the neighborhood will be employed in the construction and substantial rehabilitation of homes in the program;

(ii) The extent to which local residents, individually or through membership in local organizations, have advised or assisted the applicant in the development of the proposed program, or have participated on committees or governing boards of the applicant involved in the development of the proposed program; and

(iii) The likelihood of continued participation by local residents in program activities following selection.

The maximum number of points under this criterion will be awarded to applicants that demonstrate: A commitment to employ a significant number of local residents in the construction or substantial rehabilitation of homes in the program; a significant past commitment by local residents to the development of the program; and a strong likelihood that this level of commitment to the program will continue through program completion.

(c) *Exception.* If State or local governmental entities are prohibited by State law from making a financial or other contribution to a program and the contribution would be eligible for consideration under the criterion described at paragraph (b)(1) or (2) of this section, HUD will not penalize an applicant under the ranking process for

the lack of such contribution to the program.

§ 280.225 Final selection.

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under § 280.220. If the highest-ranked applications involve programs that predominantly serve one geographic area, HUD may substitute one or more other highly-ranked applications to ensure reasonable geographic variety in the program. Upon completion of final selection, HUD will notify each successful applicant of its selection. HUD will also notify each unsuccessful applicant that it has not been selected, and will provide the unsuccessful applicant with an explanation for the denial of the application.

Subpart E—Program Operation

§ 280.300 Obligation of funds.

When HUD selects an application for funding, will obligate sufficient amounts for a grant to cover the aggregate amount of the loans proposed under the selected program.

§ 280.303 Grant agreement.

(a) *General.* The recipient's responsibilities under NHOP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *HUD Monitoring.* HUD will monitor the recipient's performance to determine whether the recipient is complying with the requirements of the grant agreement. HUD will rely on such data as information obtained from the recipient's records and reports, findings from on-site monitoring and audit reports.

§ 280.305 Minimum participation.

The recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.320(b) are made. However, the recipient may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

§ 280.315 Eligible purchasers.

(a) *Income limitations.* (1) Each family purchasing a home constructed or substantially rehabilitated under a program must have a family income on the date of purchase that does not exceed the higher of the following:

(1) The median family income for the metropolitan statistical area in which the program is located. At any time during the development of the program, the recipient may request HUD to modify this family income requirement. To obtain a modification, the recipient must submit a request by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD may permit up to 15 percent of the families that purchase homes under this part, to have a family income on the date of purchase that is between 100 and 115 percent of the median family income for the metropolitan statistical area.

(ii) The national median income.

(2) For the purpose of determining the median family income, the recipient must use the median family income for the nation and the metropolitan statistical area, as established by HUD from the most recent decennial Census. Family income is the annual income as computed in accordance with 24 CFR 813.106.

(b) *Homeownership.* No member of a family purchasing a home constructed or substantially rehabilitated under the program may have owned a home at any time during the three years before the date of purchase.

§ 280.320 Sales contract and downpayment requirements.

(a) *Sales contract.* The recipient and each family purchasing a home constructed or substantially rehabilitated under the program must execute a sales contract. The sales contract shall contain appropriate terms and conditions covering the purchase of the home and must contain:

(1) The downpayment provisions described in paragraph (b) of this section;

(2) The repayment provisions described at § 280.330 of this part.

(3) Such other terms and conditions as HUD may require.

(b) *Downpayment.* Each family purchasing a home constructed or substantially rehabilitated under the program must provide a downpayment. A governmental entity or instrumentality may not provide funds for the family's downpayment.

(1) *Amount.* The amount of the downpayment must be equal to 10 percent of the sales price of the home except:

(i) The recipient may require a downpayment that is greater than 10 percent of the sales price of the home, if the recipient has determined that a higher downpayment is appropriate.

(ii) The recipient may require a downpayment that is less than 10 percent of the sales price of the home, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment.

(2) *Date of downpayment.* The downpayment must be made on the date required by the recipient. Under § 280.305, however, no construction or rehabilitation may be begun until at least 25 percent of the homes constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments are made.

(3) *Interest.* The recipient shall deposit the downpayment in an account with a federally-insured bank or saving and loan institution. The recipient shall pay interest on the downpayment to the family from the date that downpayment is made through the date of settlement, at the actual rate of interest earned on the account. Under no circumstances may the interest rate paid to the family be lower than the lowest rate of interest paid on time savings deposits with a federally-insured bank or savings and loan institution conducting business within the metropolitan statistical area in which the program is located.

§ 280.322 Loan requirements.

(a) *Loan requirements.* A loan made to a family purchasing a home constructed or substantially rehabilitated under the program:

(1) Must be secured by a second mortgage held by HUD on the property involved;

(2) May not exceed $15,000;

(3) May not bear interest;

(4) Is repayable to HUD upon the sale, lease, or other transfer of the property.

(5) Must be applied by the family to the purchase price of the home.

(6) May not be used by the family to provide the downpayment required under § 280.230.

(7) Is subject to such other terms and conditions as HUD may require.

(b) *Reimbursement of recipient.* Within 30 days after the date of purchase of a home with a loan under

this part, HUD will provide the recipient with an amount equal to the amount of the loan.

§ 280.330 Repayment of loan.

(a) *Repayment.* A family purchasing a home with a loan under this part must repay the loan to HUD, if the family sells, leases, or transfers any interest in the property. If the family refinances the first mortgage and the refinancing is unrelated to a sale, equity withdrawal, lease or transfer of an interest in the property, the family will not be required to repay the loan. If the refinancing of the first mortgage involves an equity withdrawal, the family will be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

(b) *HUD-approval.* (1) The family may request HUD approval of a sale or other transfer of the property without full repayment. Approval will be granted if HUD determines that an undue hardship will result from the application of the repayment requirement. HUD will make this finding only if the proceeds of the transaction are insufficient to repay the loan amount in full. Approval will be granted only to the extent that the proceeds of the transaction are insufficient to repay the loan in full. HUD will not approve the lease of a home without repayment.

(2) To the extent that HUD approves a sale or transfer without repayment, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

§ 280.225 Funding amendments and deobligation of funds.

(a) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated.

(b) *Deobligation.* (1) HUD may deobligate amounts:

(i) If the amount of the loans provided under the program are less than the amount of the loans anticipated in the application; or

(ii) If the recipient fails to carry out activities under the program within a reasonable time after selection;

(2) If as a result audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(3) The grant agreement may set forth in detail other circumstance under which funds may be deobligated, and other sanctions may be imposed.

Dated: July 8, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-25730 Filed 11-7-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-888; FR-2514]

Delegation of Authority with Respect to the Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Nehemiah Housing Opportunities Program was authorized by Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). This notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: This notice is effective on July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner for the Nehemiah Housing Opportunities Program. All of the Secretary's authority with respect to this program is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the program.

Nehemiah Housing Opportunities Program is a new program authorized by Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Proposed rules for the operation of the program are published elsewhere in today's issue of the **Federal Register**. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Nehemiah Housing Opportunities Program as authorized in Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), except as indicated in section B. below. This includes the authority to issue or waive rules, regulations or guidelines under the program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A, the power to sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations or guidelines under the Program.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: July 8, 1988.

Carl D. Covitz,

Acting Secretary.

[FR Doc. 88-25729 Filed 11-7-88; 8:45 am]

BILLING CODE 4210-32-M

federal register

Tuesday
November 8, 1988

Part IV

Department of Energy

Office of Energy Research

Research Opportunity Announcement; 1988; Notice

DEPARTMENT OF ENERGY

Office of Energy Research

Research Opportunity Announcement; 1988

I. Introduction

The Office of Energy Research (OER), Department of Energy, invites any universities or other institution of higher education, not-for-profit or for-profit organizations, non-Federal agency, or entity to submit competitive proposals for a contract for the conduct of research in any of the areas set forth in Appendix A. An unaffiliated individual also is eligible for a competitive award. The project period for which DOE expects to provide funding for a selected proposal shall generally not exceed three years and may exceed five years only if DOE makes a renewal award or otherwise extends the contract. This Announcement is being issued pursuant to section 309(b)(2) of the Federal Property and Administrative Services Act of 1949 as added by Pub. L. 98–369, the Competition in Contracting Act of 1984; the Federal Aquisition Regulations (FAR) 6.102(d)(2); and FAR 35.016.

II. Definitions

Research means basic and applied research and that part of development not related to the development of a specific system or hardware procurement. The primary aim of research is scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware. See also the definition for basic and applied research at FAR 35.001.

III. Proposals

An original and seven copies of an initial proposal submitted in response to this Research Opportunity Announcement must be submitted to: Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545. Proposals may be submitted to DOE at any time after public release of the Reseach Opportunity Announcement, but in all cases must be received by DOE within twelve months after the publication date of this Research Opportunity Announcement in the Federal Register.

IV. Information To Be Provided in Proposals

A. Each Proposal Should Include the Following Information

1. A DOE F 4650.2 application face page that requests basic information on the organization, principal investigator and the proposed project.

2. A detailed description of the proposed project, including the objectives of the project, its relationship to the program description(s) set forth in Appendix A and the proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.A. below.

3. Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the proposer, and the cost-sharing arrangements, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)

4. A budget with supporting justification sufficient to evaluate the costs of the proposed project (ER budget forms 4620.1 and 4620.1A should be used.)

5. A description of the proposer's management capability (including cost management techniques), experience and past performance, and subcontracting practices.

6. The proposal face page must be signed by the individual who is applying and by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

B. Renewal Proposals

Proposals for a renewal award must be submitted in an original and seven copies to the DOE contracting officer at the DOE Office administering the current contract.

C. Other Information for Proposers

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

V. Proposal Evaluation and Selection

A. Proposals shall be evaluated for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE. After DOE has held a proposal for 6 months, the proposer may, in response to DOE's request, be required to revalidate the terms of the original proposal. DOE staff shall perform an initial evaluation of all proposals to ensure that the information required by this Research Opportunity Announcement is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities.

For proposals which pass the initial evaluation, DOE shall objectively evaluate each proposal received using scientific or peer review against the criteria set forth below. OER may supplement internal DOE review resources with peer review, in addition to Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available. Mail reviews are most commonly used to obtain peer review comments. Large dollar value proposals, technically complex/multidisciplinary proposals or those proposals submitted in a scientific field for which review committees are currently available to ER will generally be reviewed by peer committees, if determined to be appropriate by the program office.

DOE shall select evaluators on the basis of their professional qualifications and expertise in the field of research. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

DOE shall evaluate new and renewal proposals based on the following criteria which are listed in descending order of importance:

(1) The scientific and technical merit of the research;

(2) The appropriateness of the proposed method or approach;

(3) Competency of research personnel and adequacy of proposed resources; and

(4) Reasonableness and appropriateness of the proposed budget.

B. In addition to the evaluation criteria set forth in paragraph A, DOE shall consider the proposer's technical performance under the existing contract during the evaluation of a renewal proposal

C. Proposals will be selected for award based upon the findings of the technical evaluations, the importance and relevance of the proposed research to OER's mission, and fund availability. Cost reasonableness and realism will also be considered to the extent appropriate. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a

proposer prior to the award of a contract. Such negotiations are not a commitment that DOE will make an award. Resultant contracts will be subject to the applicable portions of the Federal Acquisition and Department of Energy Acquisition Regulations.

Issued in Washington, DC on October 17, 1988.

D.D. Mayhew,

Acting Deputy Director for Management, Office of Energy Research.

Appendix A

The Office of Basic Energy Science

This program supports basic science research efforts in a variety of disciplines to broaden the energy supply and technology base of knowledge. The major science divisions and their objectives are as follows:

(i) Energy Biosciences

The primary objective of this program is to generate a base of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences. This work serves as the underpinning for DOE's efforts in biomass production of fuels and chemicals, microbial conversions of biomass, and biological systems for the conservation of energy.

(ii) Chemical Sciences

This program has as its primary objectives: Increased understanding of basic chemical or physical phenomena which are likely to be important to existing or future technological concepts for production or conversion of energy; discovery of new phenomena bearing on chemical or physical aspects of energy processes; elucidation of fundamentally new general techniques for separation of energy-related mixtures or for the chemical analysis of energy-related substances. Also included is a study of the basic chemical and physical properties of the actinide elements and their compounds. This program supports the operation of the Stanford Synchrotron Radiation Laboratory and the production of a broad variety of isotopically enriched research materials.

(iii) Carbon Dioxide Research

This program's goal is to develop a sound, quantitative atmospheric carbon dioxide knowledge based to aid in energy policy decision making. This goal involves the following objectives: Improve knowledge of the carbon cycle; improve estimates of future atmospheric carbon dioxide; improve understanding of the effects of atmospheric carbon dioxide on climate; improve understanding of the direct carbon dioxide effects on productivity of nature and agricultural systems; develop and verify methods for the detection of climate change due to increasing atmospheric carbon dioxide; identify define and quantify indirect effects; define possible options for mitigating long-term consequences of a higher CO_2 atmosphere.

(iv) Geosciences

The goal of this program is to develop a quantitative, predictive understanding of the energy-related aspects of geological, geophysical and geochemical processes within the earth and in the solar-terrestrial interface. This understanding and knowledge base is needed to provide for long-range requirements of U.S. efforts in energy resources recognition, evaluation, utilization, and their long-term environmental implications. The program is stressing fundamental research related to discovery and recovery of domestic oil and gas resources.

(v) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies.

(vi) Materials Sciences

The objective of this program is to increase our understanding of phenomena and properties important to materials behavior which will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(vii) Advanced Energy Projects

The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, also at estimating its economic viability.

Office of High Energy and Nuclear Physics

This program supports 90% of the U.S. effort in high energy and nuclear physics. The objective of these programs are indicated below.

(i) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

(ii) High Energy Physics (Including Supercollider Activities)

The primary objectives of this program are to understand the nature and relationships among the fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

Office of Health and Environmental Research

The goals of this research program are as follows:

Provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development.

Utilize the Department's unique resources to solve major scientific problems in medicine and biology.

The goals of the program are accomplished through the effort of its divisions, which are:

(i) Physical and Technological Research

The objectives of this program are to develop new concepts and techniques for detecting and measuring hazardous physical and chemical agents related to energy production: Characterize the atmospheric transport and chemical transformations of radionuclides and energy-related chemical effluents in order to define pathways to human exposure; determine the physical and chemical mechanisms of radiation action in biological systems; and develop new instrumentation and technology for biological and biomedical research.

(ii) Ecological Research

The objectives of this program are to identify the physical, chemical, and biological processes that cycle nutrients and energy-related materials through terrestrial and aquatic ecosystems, including the coastal oceans; and to determine the resiliency of ecosystems to natural and energy-related stresses. Fundamental research in hydrological

transport, mobility, and degradation of energy substances at shallow depth will continue to receive increased attention.

(iii) Health Effects Research

The objectives of this program are to develop information in experimental biological systems for estimating or predicting risks of carcinogenesis, mutagenesis, and delayed toxiocological effects associated with human exposures to energy-related radiations and chemicals; to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related agents; to support fundamental research on biomolecular structure, gene structure, functions and control, genetic damage and repair, and cell transformation and to create new tools and resources for characterizing the molecular nature of the human genome.

Increased emphasis will be placed on developing technologies and resources for characterization of the human genome and the utilization of unique resources for the determination of biological structure.

(iv) Human Health and Assessments

The goals of this program fall into two broad categories, human health and nuclear medicine.

The objectives of the human health component are to ascertain by epidemiologic and dosimetric methods the potential spectrum of risks to human health related to energy generation and usage, operation of DOE facilities, and nuclear medicine procedures, and to detect and measure significant health effects in humans exposed to naturally occurring radiation, primarily radon and its daughter products, and energy-related chemicals. Increased emphasis in the future will be on the use of biochemical, genetic, and molecular endpoints.

The nuclear medicine component is aimed at enhancing the beneficial applications of radiation, radionuclides, and stable isotopes in the diagnosis, study, and treatment of human diseases. This includes the development of new techniques for stable and radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes. Increased emphasis for the future will be on the development of new isotopes and radiopharmaceuticals for studies of human nutrition, cardiac function, neurological disorders, and disease control.

Office of Fusion Energy

The magnetic fusion energy program is an applied research and development program whose goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by three divisions, whose major functions are as listed below.

(i) Applied Plasma Physics

This Division seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP research programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; and (3) critical tests and evaluation of promising alternate fusion concepts that may lead to more economic fusion reactor systems.

(ii) Confinement Systems

This Division has as its primary objective the conduct of research efforts to investigate and resolve basic physics issues associated with medium- to large-scale confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densities and temperatures, the understanding of the physical laws governing plasma energy transport and confinement scaling, equilibrium and stability of high plasma pressure, the investigation of plasma interaction with radio-frequency waves, and the study and control of particle transport in the plasma.

(iii) Development and Technology

This Division supports the research and development of the technology necessary for the fabrication and operation of present and future plasma and fusion devices. The program also pursues R&D and system studies pertaining to critical feasibility issues of fusion technology and development.

Field Operations Management

This office administers special purpose support programs that cut aross DOE program areas and in conjuction with this activity related conferences and research and training initiatives are funded to further these areas of interest.

(i) Nuclear Engineering Research

The objective of this program is to support research effort aimed at strengthening university-based nuclear engineering programs. Specific areas of basic and applied research of interest include: (1) Material behavior in a radiation environment typical of advanced nuclear power plants; (2) real-time instrumentation that identifies and applies innovative measurement technologies in nuclear-related fields; (3) advanced nuclear reactor concepts; (4) applied nuclear sciences that address improvements in the applications of radiation and the understanding of the interaction of radiation with matter; (5) engineering science research applicable to advanced nuclear reactor concepts, industry safety and reliability concerns; (6) neutronics that address improvements in reactor computational methodologies and knowledge of the basic fission processes; and (7) nuclear thermal hydraulics that address improvements of models and analysis of thermal hydraulic behavior in an advanced nuclear reactor system.

Scientific Computing Staff

The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes involved in the research and development programs in DOE. Broad emphasis is given in three major categories: analytical and numerical methods, information analysis techniques, and advanced computer concepts.

[FR Doc. 88-25823 Filed 11-7-88; 8:45 am]

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federal register

Tuesday
November 8, 1988

Part V

The President

Part V

The President

Federal Register
Vol. 53, No. 216
Tuesday, November 8, 1988

Presidential Documents

Title 3—

The President

Proclamation 5897 of November 4, 1988

Week of Remembrance of Kristallnacht, 1988

By the President of the United States of America

A Proclamation

Fifty years ago, on the night of November 9–10, 1938, German Nazis committed a nationwide pogrom against Jewish people. By the next morning, scores of Jews were dead, hundreds were injured, and many synagogues, shops, and homes lay in ruins. This vicious attack became known around the globe as "Kristallnacht"—"crystal night" or "the night of broken glass"—from the mute evidence of shattered window glass it left in so many streets. Half a century later, we mourn every victim of this pogrom and we rededicate ourselves to preventing repetitions of such brutality anywhere and everywhere.

The world had been ignoring many warning signs in Germany and elsewhere of increasing anti-Semitism, disregard for human rights, and eugenically motivated assaults on individual dignity and worth. Kristallnacht surely should have alerted everyone that time had run out—that the "peace in our time" proclaimed hopefully by British Prime Minister Neville Chamberlain only a few weeks before was not to be. It took World War II to eliminate the Nazi threat to humanity and to our most sacred values.

Fifty years later, in our Nation's Capital, we have now laid the cornerstone for a national museum to commemorate those who perished in the Holocaust foreshadowed by Kristallnacht. We are determined as Americans to keep their memory fresh and enduring. We resolve to remind ourselves of the enormous evil of which mankind is capable and to remain vigilant.

We know that anti-Semitism is still present in the world and that there are still those who oppress others for their race, creed, or color and their simple desire for self-determination and a better life. We know where such racism and prejudice can lead. Let us ever recall that a remedy exists; it is our profound belief in and our readiness to defend the immortal declaration "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." If we hold fast to these truths we will find the inspiration and the power to prevent inhumanity on the face of the earth.

The Congress, by House Joint Resolution 654, has designated November 4 through November 10, 1988, as "Week of Remembrance of Kristallnacht" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 4 through November 10, 1988, as Week of Remembrance of Kristallnacht. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25991
Filed 11-7-88; 11:03 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5898 of November 4, 1988

National Teacher Appreciation Day, 1988

By the President of the United States of America

A Proclamation

Education requires devotion and hard work from student and teacher alike, and good teachers are inseparable from learning at any age. Education is a lifelong process that benefits individuals and entire communities and countries and helps lay the foundation of the future. We should all express our gratitude to the teachers among us who seek to offer pupils a thirst for knowledge, a solid education, and the inspiration to achieve and excel throughout life.

Teachers do an incalculable amount of good as they teach pupils how to study and learn; provide instruction in the skills of reading, writing, mathematics, languages, history, the sciences, and other disciplines; and transmit understanding of and appreciation for the many influences that have shaped our land of liberty and justice. Teachers do much good as well as they offer vocational instruction, continuing education, and education for special needs. By word and deed, teachers foster intellectual and all-around development; they must do so in conjunction with the example and guidance parents and families give their youngsters.

Our country's great teachers often make many sacrifices as they fulfill their countless responsibilities. They have earned, and truly deserve, the utmost gratitude and esteem of students, parents, and community members.

The Congress, by House Joint Resolution 438, has designated November 4, 1988, as "National Teacher Appreciation Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 4, 1988, as National Teacher Appreciation Day. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25992
Filed 11-7-88; 11:04 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5899 of November 4, 1988

National Farm-City Week, 1988

By the President of the United States of America

A Proclamation

Communication systems are the essential circuitry of democracy, the lifelines of information and ideas that provide the motive power for economic growth, social development, and personal enrichment. Throughout our history as a Nation of great size and dynamic opportunities, America has relied on the creation and extension of new lines of communication as a primary means of achieving greater cohesion and more rapid transfer of knowledge and services.

During National Farm-City Week, we pause to recognize formally this aspect of our heritage and to rededicate ourselves to the goal of open and effective communication between rural and urban people, groups, and institutions. The pace of change in this regard has been truly extraordinary over the past century—with, for example, rural free delivery, the telephone, radio, and television. From the vantage point of the late 20th century, it may be hard for us to imagine how significant these and other developments in urban-rural communication actually were.

Advances in communication are even more vital today, when an average of 112 people rely on a single American farmer for their supply of food and fiber and agriculture is the focus of increasing international commerce and competition. The range of agricultural issues has grown, too, to include public concern over the environment, recreational areas, water, wildlife, food safety and nutrition, and, of course, the productivity and profitability of farming itself. Fortunately, new means of communication are facilitating the rapid transfer of the ever more complex data needed to support our Nation's thriving mix of urban and rural activity. From satellites to on-line communications, from specialized newsletters to general trade publications, America's city-dwellers and farm families have an array of impressive new tools for sharing the fruits of their intelligence and their labor in the pursuit of a better life for all.

For the past 34 years, the theme of urban-rural dialogue and communication has been a regular part of our national celebration of Thanksgiving Week. Let us pause again this year to acknowledge our gratitude for the bounty of energy and invention God has bestowed upon our land.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 18–24, 1988, as National Farm-City Week. I call upon all Americans to join in recognizing the importance of communication between rural and urban areas and in acclaiming the collaborative accomplishments of our productive farmers and urban residents.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25993
Filed 11-7-88; 11:05 am]
Billing code 3195-01-M

federal register

Tuesday
November 8, 1988

Part VI

Office of Personnel Management

45 CFR Part 801

Voting Rights Program; Final Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

45 CFR PART 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before December 8, 1988.

ADDRESS: Send or deliver comments to James Green, Associate General Counsel, Office of Personnel Management, Room 7353, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Green, (202) 632-5087.

SUPPLEMENTARY INFORMATION:

The Attorney General has designated Hidalgo County, Texas, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on November 4, 1988, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to prepare and maintain lists of persons eligible to vote and Federal observers to observe local elections.

Under 5 U.S.C. 553(b)(3)(B), the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to 5 U.S.C. 553(d)(3), the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in light of the pending elections to be held on November 8, 1988, in the subject county, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291 (February 17, 1981), Federal Regulation. OPM is required, pursuant to the Voting Rights Act of 1965, as amended, to give notice to the public of the time and place to file applications to vote. In order to carry out the intent of the Voting Rights Act, notice should be given prior to an election. Due to the impending election on November 8, 1988, section 8(a)(2) permits an exemption from the procedures outlined in Executive Order 12291.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Section 801.202, Appendix A, is amended by adding alphabetically the Texas county of Hidalgo to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Dates, Times, and Places for Filing

* * * * *

Texas

County; Place for Filing; Beginning Date

* * * * *

Hidalgo—101 East 14th (West Entrance), Mission, Texas, 78572, (512) 585-8380, November 8, 1988.

* * * * *

[FR Doc. 88-26000 Filed 11-7-88; 11:48 am]

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of law is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documets, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 990/Pub. L. 100-535
Imperial Valley College Barker Museum Land Transfer Act of 1988. (Oct. 28, 1988; 102 Stat. 2709; 1 page) Price: $1.00

H.R. 4209/Pub. L. 100-536
To authorize appropriations to carry out title I of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years, 1989, 1990, and 1991. (Oct. 28, 1988; 102 Stat. 2710; 1 page) Price: $1.00

H.R. 4375/Pub. L. 100-537
Michigan Public Lands Improvement Act of 1988. (Oct. 28, 1988; 102 Stat. 2711; 6 pages) Price: $1.00

H.R. 4410/Pub. L. 100-538
To designate the Federal Building at Spring and High Streets in Columbus, Ohio, as the "John W. Bricker Federal Building". (Oct. 28, 1988; 102 Stat. 2717; 1 page) Price: $1.00

H.R. 4480/Pub. L. 100-539
To change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes. (Oct. 28, 1988; 102 Stat. 2718; 1 page) Price: $1.00

H.R. 4557/Pub. L. 100-540
To amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements. (Oct. 28, 1988; 102 Stat. 2719; 1 page) Price: $1.00

H.R. 4777/Pub. L. 100-541
To modify the boundary of the Guadalupe Mountains National Park, and for other purposes. (Oct. 28, 1988; 102 Stat. 2720; 1 page) Price: $1.00

H.R. 4992/Pub. L. 100-542
Telecommunications Accessibility Enhancement Act of 1988. (Oct. 28, 1988; 102 Stat. 2721; 2 pages) Price: $1.00

H.R. 5007/Pub. L. 100-543
To designate the United States Courthouse at 620 Southwest Main Street, Portland, Oregon, as the "Gus J. Solomon United States Courthouse". (Oct. 28, 1988; 102 Stat. 2723; 1 page) Price: $1.00

H.R. 5066/Pub. L. 100-544
To add additional land to the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes. (Oct. 28, 1988; 102 Stat. 2724; 3 pages) Price: $1.00

H.R. 5052/Pub. L. 100-545
To amend title 31 of the United States Code to provide for a transfer of control of the General Accounting Office Building and to improve the administration of the General Accounting Office. (Oct. 28, 1988; 102 Stat. 2727; 3 pages) Price: $1.00

H.R. 5325/Pub. L. 100-546
Federal Crop Insurance Commission Act of 1988. (Oct. 28, 1988; 102 Stat. 2730; 6 pages) Price: $1.00

H.R. 5395/Pub. L. 100-547
Sipsey Wild and Scenic River and Alabama Addition Act of 1988. (Oct. 28, 1988; 102 Stat. 2736; 4 pages) Price: $1.00

H.J. Res. 629/Pub. L. 100-548
Designating October 22, 1988, as "National Chester F. Carlson Recognition Day". (Oct. 28, 1988; 102 Stat. 2740; 2 pages) Price: $1.00

H.J. Res. 644/Pub. L. 100-549
Granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission. (Oct. 28, 1988; 102 Stat. 2742; 7 pages) Price: $1.00

S. 59/Pub. L. 100-550
National Forest and Public Lands of Nevada Enhancement Act of 1988. (Oct. 28, 1988; 102 Stat. 2749; 6 pages) Price: $1.00

S. 744/Pub. L. 100-551
To amend the Toxic Substances Control Act to assist States in responding to the threat to human health posed by exposure to radon. (Oct. 28, 1988; 102 Stat. 2755; 11 pages) Price: $1.00

S. 1704/Pub. L. 100-552
To authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes. (Oct. 28, 1988; 102 Stat. 2766; 3 pages) Price: $1.00

S. 1727/Pub. L. 100-553
National Deafness and Other Communication Disorders Act of 1988. (Oct. 28, 1988; 102 Stat. 2769; 7 pages) Price: $1.00

S. 1914/Pub. L. 100-554
To designate a segment of the Wildcat River in the State of New Hampshire as a component of the National Wild and Scenic Rivers System, and for other purposes. (Oct. 28, 1988; 102 Stat. 2776; 2 pages) Price: $1.00

S. 1985/Pub. L. 100-555
To improve the protection and management of archeological resources on Federal land. (Oct. 28, 1988; 102 Stat. 2778; 1 page) Price: $1.00

S. 1986/Pub. L. 100-556
To require that plastic ring carrier devices be degradable, and for other purposes. (Oct. 28, 1988; 102 Stat. 2779; 3 pages) Price: $1.00

S. 2148/Pub. L. 100-557
To amend the Wild and Scenic Rivers Act of 1968, and for other purposes. (Oct. 28, 1988; 102 Stat. 2782; 14 pages) Price: $1.00

S. 2436/Pub. L. 100-558
To reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission. (Oct. 28, 1988; 102 Stat. 2796; 1 page) Price: $1.00

S. 2545/Pub. L. 100-559
To redesignate Salinas National Monument in the State of New Mexico, and for other purposes. (Oct. 28, 1988; 102 Stat. 2797; 6 pages) Price: $1.00

H.R. 775/Pub. L. 100-560
To provide for the establishment of the Poverty Point National Monument, and for other purposes. (Oct. 31, 1988; 102 Stat. 2803; 2 pages) Price: $1.00

H.R. 2266/Pub. L. 100-561
Pipeline Safety Reauthorization Act of 1988. (Oct. 31, 1988; 102 Stat. 2805; 13 pages) Price: $1.00

H.R. 2628/Pub. L. 100-562
Imported Vehicle Safety Compliance Act of 1988. (Oct. 31, 1988; 102 Stat. 2818; 8 pages) Price: $1.00

H.R. 3408/Pub. L. 100-563
To authorize additional appropriations for the Central Utah Project, to implement a settlement with the Strawberry Water Users, to expand the John Muir Historic Site, to prohibit the expansion of any reservoir within the boundaries of Yosemite National Park, and for other purposes. (Oct. 31, 1988; 102 Stat. 2826; 5 pages) Price: $1.00

H.R. 3559/Pub. L. 100-564
To authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes. (Oct. 31, 1988; 102 Stat. 2831; 2 pages) Price: $1.00

H.R. 3685/Pub. L. 100-565
To amend title 31, United States Code, to increase from $25,000 to $40,000 the maximum amount that the United States may pay in settlement of a claim against the United States made by a member of the uniformed services or by an officer or employee of the Government. (Oct. 31, 1988; 102 Stat. 2833; 1 page) Price: $1.00

H.R. 3757/Pub. L. 100-566
Federal Employees Leave Sharing Act of 1988. (Oct. 31, 1988; 102 Stat. 2834; 13 pages) Price: $1.00

H.R. 4182/Pub. L. 100-567
Zuni-Cibola National Historical Park Establishment Act of 1988. (Oct. 31, 1988; 102 Stat. 2847; 6 pages) Price: $1.00

H.R. 4262/Pub. L. 100-568
Berne Convention Implementation Act of 1988. (Oct. 31, 1988; 102 Stat. 2853; 9 pages) Price: $1.00

H.R. 4416/Pub. L. 100-569
To extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989. (Oct. 31, 1988; 102 Stat. 2862; 3 pages) Price: $1.00

H.R. 4418/Pub. L. 100-570
National Science Foundation Authorization Act of 1988. (Oct. 31, 1988; 102 Stat. 2865; 14 pages) Price: $1.00

H.R. 4818/Pub. L. 100-571
To establish the National Park of American Samoa. (Oct. 31, 1988; 102 Stat. 2879; 5 pages) Price: $1.00

H.R. 4939/Pub. L. 100-572
Lead Contamination Control Act of 1988. (Oct. 31, 1988; 102 Stat. 2884; 6 pages) Price: $1.00

H.R. 5001/Pub. L. 100-573
To establish the Delaware Water Gap National Recreation Area Citizen Advisory Commission. (Oct. 31, 1988; 102 Stat. 2890; 2 pages) Price: $1.00

H.R. 5199/Pub. L. 100–574

To make nonmailable any plant, fruit, vegetable, or other matter, the movement of which in interstate commerce has been prohibited or restricted by the Secretary of Agriculture in order to prevent the dissemination of dangerous plant diseases or pests, and for other purposes. (Oct. 31, 1988; 102 Stat. 2892; 3 pages) Price: $1.00

H.R. 5318/Pub. L. 100–575

Egg Research and Consumer Information Act Amendments of 1988. (Oct. 31, 1988; 102 Stat. 2895; 2 pages) Price: $1.00

H.R. 5389/Pub. L. 100–576

Bangladesh Disaster Assistance Act of 1988. (Oct. 31, 1988; 102 Stat. 2897; 4 pages) Price: $1.00

H.R. 5442/Pub. L. 100–577

Asbestos Information Act of 1988. (Oct. 31, 1988; 102 Stat. 2901; 2 pages) Price: $1.00

H.R. 5471/Pub. L. 100–578

Clinical Laboratory Improvement Amendments of 1988. (Oct. 31, 1988; 102 Stat. 2903; 13 pages) Price: $1.00

S. 136/Pub. L. 100–579

Native Hawaiian Health Care Act of 1988. (Oct. 31, 1988; 102 Stat. 2916; 8 pages) Price: $1.00

S. 2723/Pub. L. 100–580

Hoopa-Yurok Settlement Act. (Oct. 31, 1988; 102 Stat. 2924; 14 pages) Price: $1.00

H.R. 2677/Pub. L. 100–581

To establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987). (Nov. 1, 1988; 102 Stat. 2938; 12 pages) Price: $1.00

H.R. 3515/Pub. L. 100–582

Medical Waste Tracking Act of 1988. (Nov. 1, 1988; 102 Stat. 2950; 10 pages) Price: $1.00