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

Contents

Federal Register

Vol. 54, No. 11

Wednesday, January 18, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
78 1923

14 CFR
1 1926
39 1926
91 1926
121 1926
125 1926
129 1926
135 1926
Proposed Rules:
39 1944

15 CFR
Proposed Rules:
960 1945

16 CFR
Proposed Rules:
13 (2 documents) 1946, 1948

21 CFR
558 1927
Proposed Rules:
357 2039

23 CFR
658 (2 documents) 1928, 1930

30 CFR
256 2042
281 2042
282 2058

38 CFR
Proposed Rules:
17 1950

40 CFR
52 (2 documents) 1931, 1934
271 1940
Proposed Rules:
52 (2 documents) 1953, 1954

42 CFR
Proposed Rules:
405 1956
424 1956
462 1956
466 1956
473 1956
476 1956
489 1956

47 CFR
21 1941
94 1941
Proposed Rules:
90 1967

50 CFR
611 2039
663 2039

Rules and Regulations

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-171]

Brucellosis in Cattle; Interstate Movement of Cattle from Class B and Class C States or Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by imposing additional restrictions on the interstate movement of certain cattle from Class B states or areas and from Class C states or areas. This rule will help reduce the risk of the interstate spread of brucellosis and will further our goal of eradicating the disease.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Veterinary Medical Officer, Animal Health and Depredation Management Systems, Program and Policy Development, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis, a serious infectious and contagious disease of animals and man. The regulations are part of a cooperative federal and state program to eradicate the disease and to protect states and areas where eradication efforts have been successful.

On September 28, 1988, we published in the **Federal Register** (53 FR 37774-37778, Docket Number 88-121), a document proposing to amend §§ 78.8 through 78.10 by imposing additional restrictions on the interstate movement of certain cattle from Class B and Class C States or areas. Under the proposed rule, brucellosis exposed female cattle from Class B States or areas would be allowed to move interstate to recognized slaughtering establishments and quarantined feedlots only. Male cattle under 6 months of age from herds known to be affected would continue to move interstate in accordance with the current regulations. Under the proposal, female cattle and test-eligible male cattle originating in Class C States or areas which are not brucellosis exposed and are from herds not known to be affected would be allowed to move interstate to recognized slaughtering establishments and quarantined feedlots only. All other interstate movement of these cattle from Class C States or areas would be allowed only if they originate in certified brucellosis-free herds.

We are adopting the provisions of the proposed rule based on the reasons set forth in the proposal and in this supplementary information section.

Comments

Our proposal invited the submission of written comments postmarked or received on or before October 13, 1988.

We received 15 comments addressing the proposed rule. Nearly all of the comments we received were submitted by state agencies and associations representing the cattle industry. Five of the commenters supported the proposed rule as published, without additional comment. Ten expressed general support for the proposed rule but noted additional concerns beyond the scope of the proposal, as discussed below. Two of these commenters objected to the form of § 78.9, asserting that it should be revised for purposes of clarity.

Five comments addressed regulatory restrictions that we did not propose to revise. One commenter suggested that bull calves up to one year of age originating from herds not known to be affected in Class B and Class C States or areas be allowed to move without restriction. The commenter stated that at that age, there is no risk of disease transmission from an infected, sexually intact male, and that the age at which restrictions are imposed should be changed from 6 months to 12 months.

Apparently, this commenter has confused the regulations contained in § 78.8 concerning exposed cattle, with those of § 78.9, applicable to cattle originating in herds not known to be affected. Paragraphs (b) and (c) of § 78.9 impose restrictions on test-eligible cattle which originate in Class B and Class C States or areas, respectively, that are not brucellosis exposed, and are from a herd not known to be affected. Bull calves become test-eligible when they reach 18 months of age. This is generally considered to be when they reach sexual maturity. The commenter is therefore needlessly concerned, since the regulations do not impose restrictions on the interstate movement of bull calves from Class B and C States or areas from herds not known to be affected until they are test-eligible.

We received two comments urging us to remove restrictions on the movement of bull calves under 18 months of age from infected herds. In support of this position, one commenter cited the resolution adopted by the National Cattlemen's Association and the recommendation of the Epidemiologist Group of the Southern Animal Health Association. Both groups favor removing restrictions on interstate movement of bull calves less than 12 months of age from affected herds. A third commenter was in favor of the proposed rule regarding cattle from herds not known to be affected in Class C States or areas, and also endorsed the associations' recommendations.

The existing regulations allow brucellosis exposed bull calves under 6 months of age from herds known to be affected to move interstate without additional restrictions if they are: (1) Weaned from brucellosis reactors or exposed cows at least 30 days before interstate movement; or (2) nursing brucellosis exposed cows and moved within 10 days of a herd blood test. We believe there is insufficient scientific evidence to support the commenters' position that bull calves greater than 6 months of age from affected herds do not pose any disease risk and, therefore, continued restriction on interstate movement of exposed animals from high risk areas is warranted. Accordingly, we have not made any changes to those

provisions in the final rule on the basis of comments.

Three commenters stated that the regulations should allow movement of female cattle from Class C States or areas if the cattle are spayed upon arrival at their final destination. One of the commenters limited its suggestion to heifer calves from herds not known to be affected in Class C States or areas, and asked that we consider allowing these cattle to be shipped interstate to quarantined feedlots or pastures, and in sealed trucks with permit and I.D. tags, to be "S" branded or spayed upon arrival at their final destination. Another commenter suggested that the regulations be revised to allow calves with "S brand or red paint" to be shipped to assembly points, "S" branded there, and held pending full loads; to allow red painted calves to be "F" branded and grazed; and to allow heifers to be spayed at their final destination.

Current § 78.9(d)(2)(i)(A) provides that test-eligible cattle that are not brucellosis exposed from herds not known to be affected in Class C States or areas may be "S" branded upon arrival at a quarantined feedlot if moved there directly from a farm of origin. Current § 78.9(d)(2)(i)(B) provides that they may also move directly from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot, if "S" branded upon arrival at the stockyard and then accompanied by an "S" brand permit to the quarantined feedlot. The regulations in current § 78.9(d)(1)(iv) allow these cattle to be moved to a specifically approved stockyard, "S" branded there, and then moved to a recognized slaughtering establishment, if moved directly from a farm of origin or nonquarantined feedlot. The regulations in § 78.9 do not prohibit spaying cattle upon arrival at a quarantined feedlot or specifically approved stockyard if moved directly from a farm of origin. We do not believe it is necessary or desirable to provide similar provisions for movement of cattle from stockyards to their final destination due to the foreseeable risk that they may be improperly commingled or misplaced during movement. It is important that cattle be properly identified when they commence movement through the marketplace in order to maintain their identity and contain the spread of brucellosis. We cannot ensure that identification of these animals will be maintained if they are not properly identified at the first instance they might come in contact with cattle from other herds. At present, APHIS lacks the manpower and resources to carry out additional requirements for sealing and unsealing trucks, as suggested by one commenter, and we do not consider this to be a practical alternative. Specifically approved stockyards maintain facilities for handling these animals and, as a practical matter, we believe they should be required to continue to do so.

We are not proposing to include a provision for "F" branding cattle, as a commenter suggested, since this is a regulatory program employed by some states to allow cattle from herds not known to be affected in Class B and Class C States or areas to graze without going directly to a quarantined feedlot. The final rule allows female cattle and test-eligible male cattle to move from Class C States or areas to recognized slaughtering establishments and quarantined feedlots only, under the provisions of § 78.9, in order to further reduce any risk of spreading the disease. It would be contrary to our purposes, as stated in the proposal, to allow this additional movement.

We received two comments criticizing APHIS for not proposing, in toto, the recommendations of the Brucellosis Committee arising from the 1985 meeting of the United States Animal Health Association (USAHA). At that meeting, the Brucellosis Committee recommended that after October 1, 1988, only steers, spayed heifers, "S" branded cattle, and cattle from certified free herds be allowed to move interstate from Class C States or areas. One commenter stated that the Brucellosis Committee's recommendation applied to all cattle in Class C States or areas, "particularly females," without regard to age or premises of origin. The other stated that the recommendation was applicable to all cattle in Class C States or areas, without regard to status of herds of origin.

Our rule carries out the intent of the USAHA recommendation by restricting the movement of all female and test eligible male cattle from Class C States or areas, that are not brucellosis exposed, and are from a herd not known to be affected. We do not believe that the USAHA's underlying intent was to prevent movement of all cattle from Class C States or areas without regard to disease risk. This is evident from the USAHA's exclusion of steers, spayed heifers, "S" branded cattle, and cattle from certified free herds from its recommendation.

The restrictions imposed by the final rule do not apply to cattle originating in a certified free herd, because they do not present any risk of spreading the disease. The restrictions also do not apply to male cattle that are not test eligible from herds not known to be affected, because there is no scientific justification for imposing additional restrictions on male cattle that have not reached sexual maturity from these herds. We did propose to restrict interstate movement of exposed female cattle from herds known to be affected in Class B and Class C States or areas because of the attendant disease risk. The proposed restrictions do not apply to brucellosis exposed bull calves under 6 months of age that meet the criteria set forth in § 78.8(c)(1), however, because there is no scientific evidence that they present a significant risk of spreading the disease. We are not making any changes in the final rule on the basis of these comments.

Two commenters expressed concern that additional restrictions, beyond those of the proposed rule, are necessary to protect cattle and enhance eradication efforts. One commenter was concerned that unrestricted movement, as allowed under the existing regulation, of sexually intact bull calves of up to 18 months of age from herds not known to be affected in Class C States or areas could pose a disease risk. We are not aware of any scientific evidence that would justify restricting the movement of bull calves from these herds before the calves become test eligible.

The second commenter endorsed the proposed rule and suggested that we revise the regulations in the final rule to eliminate movement to quarantined feedlots. According to the commenter, this measure is necessary because movement of cattle from quarantined feedlots to breeding farms cannot be prevented, despite federal and state efforts. We believe that some movement of cattle from Class B and Class C States or areas should remain permissible under the regulations, as long as disease risk is minimized and safeguards against spread of the disease are provided. Quarantined feedlots and recognized slaughtering establishments are subject to the regulations of Part 78 and must satisfy certain minimum criteria to achieve and maintain their status. In this manner, we can ensure that safeguards are employed to protect against further spread of the disease. We are continuing our cooperative effort with the states to enforce the regulations and hope to eliminate the reason for the commenter's concern.

We are not making any changes in the final rule as a result of the comments received. We are correcting a typographical error that appeared in the text of proposed rule. The word "herd" is added following the words, "originate

in a certified brucellosis-free," in paragraph (d)(3) of § 78.9. It was inadvertently omitted from the published proposal.

Executive Order 12291 and Regulatory Flexibility Act

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

We do not expect the additional restrictions imposed by this rule on interstate movement of certain cattle from Class B and Class C States or areas to have a significant economic impact on the small entities owning herds affected by this action.

Since publication of the proposed rule on September 28, 1988, the State of Louisiana has been determined to meet the criteria for a Class B State or area. An interim rule changing the classification of Louisiana from a Class C State or area to a Class B State or area was published September 29, 1988 (53 FR 37988–37989), leaving only one area in the United States classified as Class C.

We estimate that fewer than one percent of all herds in Class B States and areas are affected by the rule. We consider that most of these are owned by small entities for purposes of our analysis. We also consider that 97 percent of all herd owners in the remaining Class C area affected by our rule are small entities, and that approximately 80 percent of all herds in the affected area are not known to be affected.

We estimate that approximately 90 percent of the cattle moved from Class B and Class C States or areas are moved interstate to quarantined and nonquarantined feedlots. As a result of this rule, cattle from herds known to be affected in Class B States or areas may continue to move interstate to quarantined feedlots. Cattle from herds not known to be affected in the Class C States or areas may also continue to move to quarantined feedlots. Cattle from certified brucellosis-free herds, steers, spayed heifers, and males that are not test-eligible, originating in Class C States or areas, may continue to move to both quarantined and nonquarantined feedlots. All female cattle from a farm of origin and from herds other than those certified brucellosis-free in Class C States or areas must be "S" branded at the farm of origin or upon arrival at a quarantined feedlot or specifically approved stockyard, and may be required to be accompanied by an "S" brand permit for interstate movement to quarantined feedlots.

We expect that some owners of cattle restricted in interstate movement by this rule will spay their cattle at a cost of $5 to $10 per head so that they may move without restrictions. This cost can be recovered when the cattle are sold at prices competitive with those for cattle from Class Free and Class A States or areas. (By spaying heifers, cattle owners also avoid the cost of vaccinating them for brucellosis.)

We also expect that some cattle feeders that receive cattle from Class B and Class C States or areas may qualify their nonquarantined feedlots as quarantined feedlots to maintain their market share of business. We do not believe that the number of cattle moved interstate to slaughter from the Class B and Class C States or areas affected by this rule will change. Most of the cattle moved interstate exclusively for breeding purposes from the one Class C area affected by this action currently originate from certified brucellosis-free herds.

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

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0047.

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 9 CFR Part 78

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

Accordingly, 9 CFR Part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

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

§ 78.8 [Amended]

2. In the introductory text of § 78.8(c)(1), the phrase ", other than female cattle which originate in Class B States or areas or Class C States or areas," is added immediately before the word "may."

3. In § 78.8(c)(2), "78.9(d)(3)(iv), or 78.9(d)(3)(v)" is removed and "or 78.9(d)(3) of this part" is added in their place.

4. In § 78.9, the first sentence of the introductory paragraph is removed, and the following two sentences are added in its place to read as follows:

§ 78.9 Cattle from herds not known to be affected.

Male cattle which are not test eligible and are from herds not known to be affected may be moved interstate without further restriction. Female cattle which are not test eligible and are from herds not known to be affected may be moved interstate only in accordance with § 78.10 of this part and this section.

* * *

* * * * *

5. In § 78.9(d), the introductory text of paragraph (d) and paragraph (d)(3) are revised to read as follows:

* * * * *

(d) *Class C States/areas.* All female cattle and test-eligible male cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas only under the conditions specified below:

* * * * *

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1 of this part, that the cattle originated in a certified brucellosis-free herd.

6. In § 78.10, the heading and paragraph (b) are revised and a new paragraph (c) is added to read as follows:

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C states or areas.

* * * * *

(b) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move into a Class C State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. Female cattle eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(c) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move interstate out of a Class C State or area [4] under § 78.9(d)(3) of this part. Female cattle from a certified brucellosis-free herd that are eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

Done in Washington, DC, this 11th day of January 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-1016 Filed 1-17-89; 8:45 am]

BILLING CODE 3410-34-M

[4] Female cattle imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence is required prior to importation of the cattle into the United States.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

Traffic Alert and Collision Avoidance System; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, Correction; Amendment number.

SUMMARY: FAA is correcting an error in the Amendment number. In FR Doc. 89-451, published Tuesday, January 10, 1989, on page 940, please change Amendment number 135-29 to read 135-30.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division; AIR-120, (202) 267-9567, 867-6941.

Michael D. Triplett,

Legal Technician, Program Management Staff, AGC-10.

[FR Doc. 89-1088 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-1-AD; Amdt. 39-6117]

Airworthiness Directives; Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", P 68TC "Observer" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", and P 68TC "Observer" airplanes, which requires removal of the eight (4 per engine) engine mount to wing attachment bolts and inspection for damage, installation of washers under the bolt heads, replacement with serviceable bolts, and torquing each bolt to the specified limits. Investigation of an accident involving a P 68C airplane and the results of a subsequent operator survey have disclosed cases of engine mounting bolts not having the required washers, plus damaged and undertorqued mounting bolts. The actions specified in this AD will ensure the structural integrity of the engine mounting system.

DATE: *Effective Date:* February 16, 1989.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished after the last engine removal.

ADDRESSES: Partenavia Service Bulletin (SB) No. 76, dated December 23, 1988, applicable to this AD, may be obtained from Partenavia Costruzione Aeronautiche S.p.A., Via Cava 80026 (Casoria (Naples) Italy. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, B-1000, Brussels, Belgium; telephone 513-38.30; or John P. Dow, FAA, ACE-109, 601 E 12th St., Kansas City, Missouri 64106; telephone 816-426-6932.

SUPPLEMENTARY INFORMATION: Investigation of a fatal accident involving a Partenavia Model P 68C airplane and a subsequent survey of several operators revealed that some airplanes had washers missing from the engine mounts, undertorque of the bolts and damaged bolts that could result in looseness of the engine mounts. As a result of these reports, the manufacturer issued SB No. 76, dated December 23, 1988, specifying removal and visual inspection of the eight (4 per engine) engine mount to wing attachment bolts on all Partenavia Costruzione Aeronautiche S.p.A. Models P 68 series airplanes.

The Registra Aeronautico Italiano (RAI), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of SB No. 76, dated December 23, 1988, and the mandatory classification of this SB by the RAI. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued requiring removal and inspection of the eight (4 per engine) engine mount to wing attachment bolts on all Partenavia P 68 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this

amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. By adding the following new AD:

Partenavia Costruzione Aeronautiche, SPA: Applies to Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", and P 68TC "Observer" (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished after the last engine removal.

To prevent loss of structural integrity of the engine mounts, accomplish the following as referenced in Partenavia Service Bulletin (SB) No. 76 dated December 23, 1988:

(a) Inspect the engine mounting system as follows for both engines:

(1) Prepare the airplane as necessary as described for "Engine Removal" in the Partenavia Maintenance Manual and support the engine with a hoist.

(2) Remove the mount bolts (P/N MS 20006–12) from the airframe one-by-one starting with the lower bolts.

(3) With a 10x magnifier, visually inspect the bolts for cracks, circumferential scoring, corrosion, or absence of protective coating on the shank of the bolt. Prior to further flight discard all damaged bolts, and replace with serviceable bolts.

(4) Insure that washers (P/N MS 20002–C6) are properly installed on all the engine mount attachment bolts with the chamfer in the hole mating with the head of the bolt.

(5) Reinstall undamaged bolts or replacement bolts and washers. Starting with the upper bolts, torque each 335 to 375 inch-pounds.

(6) Prepare the airplane for flight as described in "Installation of Engine" in the Partenavia Maintenance Manual.

(b) Repeat the requirements of paragraph (a) of this AD at any subsequent engine removal.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Division, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., Via Cava 80026 Casoria-Naples, Italy; telephone 81 759–0946; or may examine this document at the FAA, Office of Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 16, 1989.

Issued in Kansas City, Missouri, on January 6, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1090 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Narasin And Nicarbazin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. The NADA provides for using a combination Type A medicated article containing narasin and nicarbazin to manufacture a Type C medicated feed for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed NADA 138–952 which provides for the use of a combination Type A medicated article containing narasin and nicarbazin, each at a concentration of 36 grams per pound, to manufacture a Type C medicated feed for the prevention in broiler chickens of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* Narasin and nicarbazin are currently approved for separate use in broiler feeds for the prevention of coccidiosis (narasin at 54 to 72 grams per ton, nicarbazin at 113.5 grams per ton). The combination has now been shown to be safe and effective at lower concentrations for both drugs (27 to 45 grams of each drug per ton) for the prevention of coccidiosis.

The application is approved and the regulations in 21 CFR 558.4(d), 558.366(a) and (c), and 558.366(c) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by alphabetically adding new entries for "Narasin" and "Nicarbazin (granular)", and by revising the current entry for "Nicarbazin", to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] type A	Type B maximum (100x)	Assay limits percent [1] type B/C [2]
*	*	*	*
Narasin	90–110	5.675 g/lb (1.25%).	85–115/75–125
*	*	*	*
Nicarbazin (granular).	90–110	5.675 g/lb (1.25%).	85–115/75–125
Nicarbazin (powder).	98–106	5.675 g/lb (1.25%).	85–115/80–120
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

3. Section 558.363 is amended by revising paragraph (a) and by adding new paragraph (c)(1)(iii) to read as follows:

§ 558.363 Narasin.

(a) *Approvals.* Type A medicated articles containing the specified levels of narasin granted to firms identified by sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (c) of this section are as follows:

(1) To 000986: 36, 45, 54, 72, and 90 grams per pound, paragraph (c)(1)(i).

(2) To 000986: 36, 45, 54, 72, and 90 grams per pound with 10, 20, 50, and 80 percent of roxarsone, paragraph (c)(1)(ii).

(3) To 000986: 36 grams per pound with 36 grams per pound of nicarbazin, paragraph (c)(1)(iii).

* * * * *

(c) * * *

(1) * * *

(iii) *Amount per ton.* Narasin, 27 to 45 grams, plus nicarbazin, 27 to 45 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(B) *Limitations.* For broiler chickens only. Feed continuously as the sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these animals has been fatal. Withdraw 5 days before slaughter. The 2 drugs can be combined only at a 1:1 ratio for the 27 to 45 grams per ton range.

* * * * *

4. Section 558.366 is amended in the table of paragraph (c) by adding a new first entry to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27 to 45	Narasin 27 to 45	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*	Sec. 558.363 (c)(1)(iii)	000986
*	*	*	*	*

Dated: January 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1110 Filed 1–17–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

(FHWA Docket No. 88–6)

RIN: 2125–AC10

Truck Size and Weight; National Network—Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Appendix A of 23 CFR Part 658 to permit the State of Kentucky to temporarily restrict the use of the northbound lanes of Interstate Route I–75/71 from I–275 in Kentucky to the Ohio State line by certain motor vehicles in the Cincinnati area. This rule is in response to an application by the Kentucky Transportation Cabinet under the provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Director, Office of Planning (202) 366–2951 or Mr. David Oliver, Office of the Chief Counsel, (202) 366–1356, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: .

Applicable Law

The statutory basis for prohibiting State restrictions on truck use of Interstate highways and designated non-Interstate Federal-aid Primary System highways is found in sections 411 and 416 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. No. 97–424, 96 Stat. 2097 (1983), as amended by the Tandem Truck Safety Act of 1984 (TTSA), Pub. L. No. 96–554, 98 Stat. 2829 (1984), 42 U.S.C. 2311 and 2316. The STAA provides "exemption"

procedures whereby FHWA (by delegation from the Secretary of Transportation) may permit States to restrict truck use of Interstate highways.

The FHWA has concluded, after careful consideration of the law and recent court decisions, that the STAA prohibition on restrictions applies to all State bans which would directly impact STAA-authorized vehicles.

Background

In July 1986, the Secretary of the Kentucky Transportation Cabinet, in his capacity as Commissioner of Highways, ordered the prohibition of certain truck operations on the northbound lanes of I–75/71 and I–471 for safety purposes; this was later confirmed by Kentucky administrative regulation. The prohibition applied from I–275 northerly to the Ohio State line at the Ohio River on the south side of the city of Cincinnati. Specifically, the prohibition applied to northbound trucks with semitrailers which do not have destinations within the perimeter of I–275 or within a two-mile arc along the north side of I–275 in Ohio between U.S. 27 and U.S. 22.

On July 17, 1987, the FHWA notified the Governor of Kentucky that the STAA preempts truck restrictions of the type imposed, without Federal approval by the Secretary of Transportation. The State submitted an application for approval to continue the ban on both routes on September 9, 1987, additional information regarding prior consultations with the States of Ohio and Indiana on October 19, 1987, and additional accident data on December 14, 1987.

The FHWA may not approve the State's application unless FHWA determines that the segments of Interstate highways involved are not capable of safely accommodating the motor vehicles (trucks) described in the STAA.

The State of Kentucky has completed major operational improvements for I–75/71 and has programmed a major reconstruction project for a portion of the route. The State estimates that the improvements to reduce the vertical grades and horizontal curvature in the so-called "cut-in-the-hill" section of I–75/71 should be completed sometime in 1992.

On May 25, 1988, the Federal Highway Administration (FHWA) issued a Notice of Proposed Rulemaking (NPRM) (53 FR 18858) that described FHWA's preliminary evaluation of the Kentucky request, noted FHWA's denial of restrictions on I–471, discussed FHWA's proposed approval of temporary restrictions on I–75/71, and requested public comment. Pursuant to FHWA's direction, Kentucky has removed the truck restrictions on I–471.

The FHWA received twenty-six (26) comments, primarily from Northern Kentucky citizens, local governments and local officials, in response to the NPRM. Of the twenty-six (26) comments received, twenty-one (21) supported the restrictions, one (1) did not oppose the restrictions, two (2) opposed the restrictions and two (2) requested continuation of restrictions of I–471.

The two comments that opposed the restrictions were from private citizens. One opposition commenter suggested the main problem on I–75/71 had been the merging of traffic from three northbound lanes to two lanes at the Ohio River crossing. The commenter noted that this problem had been corrected by a recently completed construction project which provided three northbound lanes across the river. He stated that the I–471 left lane exit from eastbound I–275 could be a much greater hazard than allowing through trucks on I–75/71. The other opposition commenter offered no specific reason for opposition.

The American Trucking Associations, Inc., commented that it is generally opposed to operating restrictions on trucks, but is not opposed in this case because of the unique circumstances pertaining to I–75/71 in Kentucky.

None of the comments received in response to the NPRM offered any safety data or analysis nor raised any issues that had not already been considered in developing the NPRM. Therefore a detailed discussion of comments in response to the NPRM would not add to the discussion in the NPRM.

In addition to the comments received in direct response to the NPRM, the docket also contained 26 comments relating to the Kentucky petition received prior to the publication of the NPRM. Of these earlier comments, 4 opposed both I–75/71 and I–471 restrictions, 21 requested continuation of the I–471 restrictions, and 1 pressed for immediate removal of I–471 restrictions. All comments received prior to the publication were evaluated in developing the proposal published in the NPRM.

Safety Determination

The FHWA has evaluated the accident data, highway geometrics, and traffic data supplied by the State, as well as the March 7, 1987, "Interstate Truck Diversion Study" conducted by the Ohio-Kentucky-Indiana Regional Council of Governments, the metropolitan planning organization for the Cincinnati area.

Based on a careful review of the data and consideration of the comments received from interested parties, the FHWA concludes again that Kentucky's original restrictions have contributed to the significant accident reductions on Kentucky I–75/71, have had minimal effect on Kentucky I–471, and have not significantly affected alternate routes. The FHWA also concludes that I–75/71 will be fully capable of safely accommodating STAA vehicles upon completion of the programmed reconstruction described above.

The FHWA therefore reaffirms its denial of Kentucky's request for restrictions on I–471 and approves through the year 1992 the State's request for restrictions on I–75/71 to enable completion of the major regarding and realignment project programmed for the section.

Regulatory Impact

The FHWA has considered the impacts of this rulemaking and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule by allowing restrictions on the use of certain highway segments in accordance with statutory provisions. The impacts of the change addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. The segment affected represents a very small portion of the National Network and has a negligible impact of the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications involved and has governed its actions and this final rule in accordance with the principles and policymaking criteria of E.O. 12612, Federalism, of October 26, 1987. The Final rule is in response to an

application by the State. Final determination to grant the application under the relief provisions established by the TTSA amendments diminishes the impact of previous preemptive actions mandated by the STAA.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: January 11, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Chapter I, Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Kentucky to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—[Amended]

2. Appendix A to Part 658 is amended for the State of Kentucky by designating the existing note at the end of the route listing as "NOTE 1" and adding "NOTE 2" to read as follows:

Note 2: Restrictions may be applied to through traffic with semitrailers and/or trailers on northbound I–75/71 from I–275 to the Ohio State line. Through traffic is defined as trucks which do not have destinations within I–275 (Circle Freeway) nor within a two (2) mile arc paralleling I–275 on the northern side of I–275 in Ohio between U.S. 22 and U.S. 27. This note is valid through the year 1992.

[FR Doc. 89–1176 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–22–M

23 CFR Part 658

[FHWA Docket No. 83–14]

RIN: 2125–AC10

Truck Size And Weight; National Network—Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document modifies the National Network for commercial motor vehicles, in response to a request by the State of Iowa, by deleting two route segments in Iowa that have narrow pavements and are not necessary for route continuity. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. It is maintained under 23 CFR 658, Appendix A, as amended.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366–0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366–4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366–1356, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97–424, 96 Stat. 2097 may operate, was first established by the final rule (23 CFR Part 658) published in the **Federal Register** at 49 FR 23302, June 5, 1984 and is located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking. A number of revisions to the National Network have been completed or initiated by the FHWA in separate rulemaking actions. This type of rulemaking action is considered routine and intended to periodically address network changes initiated by the States, or by others through the States, as well as by the FHWA. Certain types of technical amendments to Appendix A, such as clarifications of route descriptions, adjustments in format, descriptions of available routes not on the network, etc., are not subject to notice and comment requirements. The FHWA will make such technical amendments from time to time, in the interest of maintaining accuracy for Appendix users, and publish them in a final rule in the **Federal Register.**

Route Deletions Proposed

The Iowa Transportation Commission, as the Governor's designee, had requested the deletion of three route segments on the National Network until they are widened or reconstructed. The Commission reviewed the segments as to physical and operating characteristics and found that each had a narrow pavement and was not necessary for motor carrier route continuity. The FHWA concurred that there were potential safety problems and proposed deletion of the three segments in a notice of proposed rulemaking (NPRM) published on May 25, 1988 (53 FR 18859).

The three segments are (1) the 4-mile stub route IA 40 from Allerton northerly to IA 2 with a pavement width of 20 feet, (2) the 6-mile portion of stub route IA 415 from IA 160 northwesterly to the north city limits of Polk City with a pavement width of 20 feet and severe operating problems due to the route's substandard geometrics, and (3) a 2-mile portion of IA 175 from the east junction with US 169 easterly to the east city limits of Dayton with a pavement width of 18 feet which has since been widened to 24 feet.

No comments were received in response to the NPRM, other than a request from the State that its requested deletion of a portion of IA 175 be withdrawn in view of the pavement widening. The FHWA concurs and, therefore, is deleting only IA 40 and IA 415 as proposed.

Route Information

The State of Iowa has made available a considerable number of additional route segments for STAA vehicles under State legislation passed in June 1987. Further information on available routes may be obtained from its Office of Motor Carrier Services, Iowa Department of Transportation, Des Moines, Iowa at (515) 281–5664.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major

rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule by deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: January 11, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Iowa to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—[Amended]

2. Appendix A to Part 658 is amended for the State of Iowa by removing the Posted Route Number entries:

Posted Route No.	From	To
IA 40	Begin Route	IA2
*	*	*
IA 415	US 6	NCL Polk City

and inserting in place of IA 415 the following:

Posted Route No.	From	To
IA 415	US6	IA 160

[FR Doc. 89–1177 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–22–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3496–1; NC–037]

Approval and Promulgation of Implementation Plans; North Carolina; Visibility Impairment Prevention for Federal Class I Areas, Part 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the North Carolina State Implementation Plan (SIP) which was submitted on December 15, 1987. This submittal, a revision to North Carolina's plan for visibility impairment prevention for Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 FR 20647 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's, henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (52 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The State of North Carolina did not submit a plan by August 31, 1987, and as a result EPA promulgated Part 2 provisions for North Carolina to satisfy the Settlement Agreement on November 24, 1987. The December 15, 1987, State submittal replaces the EPA-promulgated provisions, which are removed. The principal effect of the North Carolina visibility plan revision is to assure that the State is making and will continue to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATES: This action will become effective on March 20, 1989, unless notice is received by February 17, 1989, that someone wishes to submit adverse or critical comments.

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

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

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management, Air Quality Section, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

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

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

SUPPLEMENTARY INFORMATION: On December 15, 1987, the North Carolina Division of Environmental Management (NCDEM) submitted to EPA for approval a revision to the North Carolina SIP, and EPA is today approving the revision. This submittal contained certification

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

Background

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

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

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

On April 15, 1985, North Carolina submitted visibility new source review regulations (revisions to Rule 15 NCAC 2D.0530 (Prevention of Significant Deterioration) (PSD)) and visibility nonattainment NSR regulations (revisions to Rule 15 NCAC 2D.0531 (Sources in Nonattainment Areas)) to EPA for approval. These revisions met the requirments of 40 CFR 51.307(a) and 40 CFR 51.307(b), and EPA subsequently approved them on January 21, 1986 (51 FR 2695). North Carolina also submitted a visibility monitoring plan to meet the 40 CFR 51.305 requirments. The North Carolina monitoring plan was also approved in the January 21, 1986, notice (51 FR 2695).

The second part of the Settlement Agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions, including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The Settlement Agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. However, the original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if they submitted SIP's to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987. The State of North Carolina did not submit a plan by August 31, 1987, and as a result EPA promulgated Part 2 provisions for North Carolina to satisfy the settlement agreement on November 24, 1987 (52 FR 45132). The December 15, 1987, State submittal replaces the EPA-promulgated provisions, which are removed.

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

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

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

Plan Requirements—Long-Term Strategy

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

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and

6. Enforcement of emission limitations and control measures.

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

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

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

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

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

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

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

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

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

North Carolina's Plan for Visibility Impairment Prevention Program for Federal Class I Areas Part 2

The North Carolina plan is divided into two parts. Part 1 was submitted with the April 15, 1985, submittal of North Carolina's visibility PSD and nonattainment NSR regulations and was approved on January 21, 1986 (51 FR 2695). Part 2 (submittal date December 15, 1987) was developed in order to satisfy the remaining visibility provisions identified in 40 CFR 51.302(c) (General Plan Requirements).

Part 2 addresses each of the general plan requirements in 40 CFR 51.302(c) as follows:

1. Assessment of visibility impairment—North Carolina states that "As of yet, no individual sources have been shown to be impairing the visibility of a Class I area in North Carolina." They further state that "the impairment to visibility of the Class I areas in North Carolina appears to be the result of widespread, regional haze from a multitude of sources that impair visibility in every direction over a large area."

In Part 1, the State identified the five mandatory class I area located in the State as follows:

1. Great Smoky Mountains National Park

2. Joyce Kilmer Slickrock National Wilderness Area

3. Linville Gorge National Wilderness Area

4. Shining Rock National Wilderness Area

5. Swanquarter National Wilderness Area

The listing was not repeated in Part 2. The State provided in Part 1 that the FLM may, at any time, certify to the director that visibility impairment exists. In Part 1, they also listed the pollutants involved in visibility impairment and distinguished between reasonably attributable impairment and regional haze.

2. BART—Since no source or small group of sources in North Carolina have been identified as causing impairment of visibility in any designated, mandatory Class I area, North Carolina states that "Best Available Retrofit Technology (BART) as required by 40 CFR 51.302 does not apply to any source in North Carolina at this time." They also provide that "if a source in North Carolina is identified as impacting a Class I area in North Carolina or in another State, then BART will be required."

3. Integral Vistas—The State specifies that "although no integral vistas have been declared in North Carolina there are four scenic views associated with the Great Smoky Mountains National Park." These views are identified in the State plan. Since no integral vistas have been identified at this time by the FLM pursuant to 40 CFR 51.304 for the State of North Carolina Class I areas, this requirement does not apply to the State of North Carolina.

4. Provisions to Address Existing Visibility Impairment—This item need not be addressed since neither the Division nor the FLM's have identified any such impairment that can be reasonably attributed to a specific source or small group of sources in North Carolina. However, the NPS has identified that scenic views are affected by uniform haze in all North Carolina Class I areas. But, North Carolina notes that "EPA has deferred action on the regulation of uniform haze due to technical limitations; and therefore, it is not being considered in this plan at this time."

5. Long-term (10–15 year) Strategy—The State of North Carolina provides a discussion on each of the six elements required in 40 CFR 51.306(e). These are as follows:

a. Emission Reductions Due to Ongoing Programs—The State provides a discussion on the State regulations for the control of existing sources and for the control of new sources. The State provides that its goal is to "ensure 100 percent compliance of sources through its ongoing inspection program," and that these programs are adequate to meet the national goal.

b. Additional Emission Limitations—The State provides a discussion on the potential effects that an acid rain precursor reduction program (reduction of the quantities of sulfates in the atmosphere) would have on visibility. They feel visibility should improve if some program is enacted.

c. Construction Activity—The State provides a discussion of the regulations which govern open burning of debris from land clearing and right-of-way maintenance (Regulation 15 NCAC 2D.0520) and which govern hauling of materials in vehicles (General Statute 20–116(g)). These regulations provide for the minimizing of emissions from such operations. The State further provides that little or no construction activity is occurring around the Class I areas. Also, they state that "with the possible exception of burning debris from land clearing, construction activity appears to contribute little to visibility impairment in Class I areas."

d. Source Retirement and Replacement—The State provides that "no sources near a Class I area are on approved schedules for retirement or replacement. However, as old sources are replaced or modernized, the quantity of emissions for a given unit of production should decline."

e. Smoke Management—The State provides that "open burning of land for agricultural, wildlife, and forest management practices are to follow management practices acceptable to the Environmental Management Commission and, for forest lands, the North Carolina (NC) Division of Forest Resources." They also state that when forest land is burned, procedures prescribed for smoke management and burning techniques are followed by the U.S. Department of Agriculture Forest Service and the North Carolina Division of Forest Services. Also, private owners are encouraged to use the North Carolina Division of Forest Resources' procedures. They state that "these requirements are adequate to protect visibility in Class I areas."

f. Enforceability—The State provides that "all current regulations and laws are adequately enforced."

The final portion of North Carolina's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) not less frequent then every three years the long-term strategy, and to prepare a report to the Administrator and to the public. The State of North Carolina has fully met this requirement and will submit the required report to the Administrator and to the public.

The State of North Carolina has met all of the Federal Land Manager coordination requirements as required in § 51.302. The State of North Carolina notified the FLM's for each of the affected Class I areas via correspondence dated March 24, 1986 (draft of plan prior to hearing) and July 2, 1987 (copy of plan which was taken to the August 17, 1987, public hearing) (copies included in the appendix to the Part 2 plan).

Final Action

After reviewing North Carolina's plan for visibility impairment prevention for federal Class I areas, Part 2, EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the settlement agreement. EPA is therefore approving the visibility plan submitted by the State of North Carolina on December 15, 1987, and removing the visibility provisions promulgated by EPA at 40 CFR 52.1782 on November 24, 1987 (52 FR 45132).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 20, 1989, unless, within 30 days of the date of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 20, 1989.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Date: December 15, 1988.

Lee M. Thomas

Administrator.

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

PART 52—[AMENDED]

Subpart II—North Carolina

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1770 Identification of plan.

(c) * * *

(58) North Carolina plan for visibility impairment prevention for federal Class I areas, Part 2, submitted to EPA on December 15, 1987, by the North Carolina Division of Environmental Management (NCDEM) to satisfy the Part 2 visibility requirements including the State's long-term strategy and provisions to satisfy the periodic review requirements.

(i) Incorporation by reference.

(A) December 15, 1987, letter from the North Carolina Division of Environmental Management.

(B) That portion of page II–7 of the North Carolina plan for visibility impairment prevention for federal Class I areas Part 2 containing the periodic review requirements satisfying 40 CFR 51.306(c), adopted by the North Carolina Division of Environmental Management on December 10, 1987.

(ii) Additional material.

(A) Narrative SIP titled "The North Carolina Plan for Visibility Impairment Prevention for Federal Class I Areas Part 2."

§ 52.1782 [Removed and Reserved]

3. Section 52.1782, Visibility protection, is removed and reserved.

[FR Doc. 89–1181 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3506–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a March 6, 1985, **Federal Register** notice (50 FR 9052), USEPA proposed approval of certain portions and proposed disapproval of other portions of a March 28, 1983, submittal regarding specific portions of revisions to Ohio's Reasonably Available Control Technology (RACT I and II) Volatile Organic Compound (VOC) requirements in the Ohio Administrative Code, Chapter 3745–21. Chapter 3745–21 consists of emissions limitations and control requirements for sources of VOC. The revisions to Chapter 3745–21 involve certain compliance deadlines, source specific exemptions from otherwise applicable emission limitations, and alternative test procedures. USEPA's final rulemaking, today, is based upon the March 28, 1983, submittal from the State. USEPA is taking final action as proposed.

EFFECTIVE DATE: This final rulemaking becomes effective on February 17, 1989.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (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 (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental

Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: This notice presents a discussion of USEPA's review of Ohio's RACT I and II VOC requirements contained in the Ohio Administrative Code, Chapter 3745-21. The seven parts of this notice are: I. Background Information; II. Definitions, Rule 3745-21-01; III. Attainment Dates and Compliance Time Schedules, Rule 3745-21-04; IV. Control of Emissions of Organic Compounds From Stationary Sources, Rule 3745-21-09; V. Compliance Test Methods and Procedures, Rule 3745-21-01; VI. Discussion of Public Comment; VII. Final Action.

I. Background Information

On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to Ohio Administrative Code (OAC) Chapter 3745-21 and supporting data, to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these amended rules in final form in two separate rulemaking actions on June 21, 1982, and January 24, 1983. OAC Chapter 3745-21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", contains Ohio's VOC RACT I and II regulations. The regulations are embodied in the OAC as follows: Definitions, Rule 3745-21-01; Attainment dates and compliance time schedules, Rule 3745-21-04; Control of emissions of organic compounds from stationary sources, Rule 3745-21-09; and Compliance test methods and procedures, Rule 3745-21-10. USEPA initially approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980, and June 29, 1982 (45 FR 72122 and 47 FR 28097).

The following discussion presents a summary of the proposed changes to the existing rules. Where appropriate, the discussion presents the results of USEPA's analysis and USEPA's conclusion as to whether or not the change is approvable. USEPA's complete analysis is contained in a document entitled "Technical Support Document for Ohio RACT I and II Rule Revisions", dated July 18, 1983. This document is available for review at the Region V office listed above. For further details, the reader is referred to this document and the State submittal of March 28, 1983, which includes the adopted version of Rules 3742-21-01, 04, 09, 10, and supporting documentation.

II. Definitions, Rule 3745-21-01

In today's rulemaking action, USEPA is approving all new terms and definitions which Ohio has added and revised pertaining to the source categories of paper and vinyl coating, and to the use of cutback and emulsified asphalts in road construction and maintenance. The following portions of Rule 3745-21-01 have been revised.

a. Section (D)(16), (36), (50)

The definition of paper coating has been revised to include coatings applied by an extrusion coater and a definition of an extrusion coater has been added. The definition of vinyl coating has been revised to include application of coating by means of a knife or roll coater.

b. Section (F)(1-8)

Ohio has clarified the existing definitions and added new terms related to amendments to Rule 3745-21-09(N) on the use of asphalts in road construction and maintenance.

c. Sections (E)(8) and (J)(5)

Typographical errors in Sections (E)(8) and (J)(5) have been corrected.

III. Attainment Dates and Compliance Time Schedules, Rule 3745-21-04

a. Sections (C)(2) and (C)(35), Extended Compliance Schedule

USEPA is taking no action on the compliance date extension contained in Rule 3745-21-04, Sections (C)(2) and (C)(35), granted by Ohio to the Honda of America Manufacturing, Inc. auto assembly plant in Marysville. An extension for the same period of time was granted through a permit issued under Ohio's federally approved new source review program, it is currently federally enforceable, and any further federal action here is unnecessary.

USEPA is approving the State's revisions to the compliance time schedules contained in Rule 3745-21-04, as described in III b, c, d, and e below.

b. Section (C)(3) Can Coating Lines

Section (C)(3) has been revised to include an alternative compliance schedule for can coating lines subject to applicable control requirements. The alternative schedule may allow extension of the compliance deadline to December 31, 1985, if the owner or operator of the line demonstrates the necessity of the compliance date extension to the satisfaction of the Director of OEPA by supplying the documentation required in subparts (i) through (iv). A can coating compliance date extension, through the end of 1985, is consistent with USEPA's policy on compliance date extensions regarding the ultimate attainment date of December 31, 1987.

However, there is no replicable procedure specified for the Director to determine if the extension granted under this procedure will ensure reasonable further progress toward attainment. Therefore, USEPA will consider approval of compliance date extensions if each request is submitted to the Agency as an individual SIP revision. USEPA approves this section on the understanding that the State will submit each extension request to USEPA for approval through the SIP process.

c. Section (C)(15) Cutback and Emulsified Asphalts

A compliance date of April 15, 1982, has been added to OAC Rule 3745-21-04 for the use of emulsified asphalt in road construction and maintenance. This is not a compliance date extension as it refers to a new requirement.

d. Section (C)(29) Gasoline Tank Trucks

Ohio has revised the compliance date by which gasoline tank trucks are required to comply with leak testing, record-keeping, and reporting requirements. This revision requires compliance by March 31, 1983.

This extension is consistent with USEPA's August 7, 1986, compliance date extension policy regarding the ultimate attainment date of December 31, 1987. This extension can be considered expeditious because it is less than 3 years from the time the rule was adopted (February 12, 1981).

However, there is no replicable procedure specified for the Director to determine if the extension granted under this procedure will ensure reasonable further progress toward attainment. Therefore, USEPA will consider approval of compliance date extensions if each request is submitted to the Agency as an individual SIP revision. USEPA approves this section on the understanding that the State will submit each extension request to USEPA for approval through the SIP process.

e. Section (C)(33) External Floating Roof Tanks

The compliance time schedules for awarding contracts, initiating construction, and completing construction to retrofit tanks to comply with the SIP, have been revised to March 1, October 1, and November 1, 1982, respectively. The deadlines for submitting a control plan to OEPA and for final compliance with Rule 3745-21-09(Z) are unchanged.

These schedules can be considered expeditious according to USEPA's August 7, 1986, policy and compliance date extension, because they are within 3 years of adoption of the rule (February 12, 1981). These revisions do not interfere with RFP because (1) they do not change the date by which final compliance with the external floating roof tank rule is to be achieved, and (2) they do not interfere with the final attainment date of December 31, 1987. Therefore, this compliance date extension is considered to be reasonable.

IV. Control of Emission of Organic Compounds From Stationary Sources, Rule 3745–21–09

In general, USEPA finds this rule to be acceptable, based on USEPA's policies and Control Technique Guidelines (CTG), and is approving the following amendments. A discussion of actions other than approvals are contained in Part IV.b of this notice.

a. Final Approval

Sections:

- (B); Emission limitations.
- (C) (1) and (3); Surface coating of automobiles and light duty trucks.
- (I) (1) and (2); Surface coating of metal furniture.
- (K) (1) and (3) and (K)(4) (a), (b) and (c); Surface coating of large appliances.
- (N) (1), (2), and (3) (b) and (c); Use of cutback and emulsified asphalts. NOTE: USEPA is not approving (N)(3) (a) and (e).
- (O)(2); Solvent metal cleaning.
- (P) (1), (4), and (5); Bulk gasoline plants.
- (Q)(3); Bulk gasoline terminals.
- (R)(3); Gasoline dispensing facilities.
- (U)(1) and the exemptions contained in (2)(h); Surface coating miscellaneous metal parts and products.
- (X)(1) (a)(i), (b)(i), and the exemption contained in (2)(d); Rubber tire manufacturing.
- (Z) (1) (b) through (h), (2), and (3); Storage of petroleum liquids in external floating roof tanks. NOTE: USEPA is not approving (Z)(1)(a).
- (AA) (1) and (2) (b) and (c); Dry cleaning facility. NOTE: USEPA is not approving (AA)(2)(a).

b. Discussion of Actions Other than Approvals

- Section (A), Applicability

The applicability of this section was revised to include new, as well as existing, sources of VOC. USEPA is taking no action on this section as it applies to new sources of VOC. New sources are regulated by Ohio's new source review (NSR) program and USEPA's Prevention of Significant Deterioration (PSD) program. NSR and PSD may require more stringent emission limitations than those contained in this rule.

- Section (K)(4), Surface Coating of Large Appliances

Section (4) exempts three Whirlpool Corporation plants from the control requirements contained in Paragraph (K)(1). The plants are located in Sandusky, Hancock, and Marion Counties. Marion, Sandusky, and Hancock were designated attainment areas of the NAAQS for ozone on June 12, 1984 (49 FR 24124). The State implemented an accommodative ozone SIP for these Counties (i.e., a SIP that is designed to require emission reductions beyond those that are minimally necessary to maintain the ozone standards, in order to provide a margin for future source growth) and they were provided a waiver with respect to the one year of preconstruction ozone monitoring normally required by USEPA's PSD program.

Because USEPA is now approving the exemption from RACT for the Whirlpool Corporation sources located in Sandusky, Hancock, and Marion Counties (and the Cooper Tire and Rubber Company in Hancock County discussed elsewhere herein), the State no longer has an accommodative ozone SIP for these Counties. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring is terminated for the counties in which these sources are located.

Thus, in today's rulemaking action, USEPA is approving the State's exemption contained in (K)(4) (a), (b), and (c) for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties, and future sources in these counties shall comply with the PSD regulations requiring one year of preconstruction ozone monitoring.

- Section (N)(3) (a) and (e), Use of Cutback and Emulsified Asphalts

USEPA is disapproving two amendments to the requirements of Section (N) on the use of cutback and emulsified asphalt in road construction and maintenance. The first amendment extends the exemption period for use of cutback asphalts in the existing rule by two months, from October 15 through April 15 to September 15 through May 15 of each year, due to problems encountered in using emulsified asphalt during colder weather. USEPA acknowledges that emulsified asphalt does not set up properly at temperatures below 50 °F. However, OEPA has not yet provided the documentation that USEPA requested in a letter to OEPA, dated November 17, 1982, on the temperature ranges during those additional two months that the State permits the use of cutback asphalts.

The second amendment exempts a maximum daily use of 1000 gallons of cutback emulsified asphalt when applied by hand for patching or sealing cracks. OEPA states that this exemption is necessary due to a lack of personnel trained to use low-volume emulsified asphalt for road patching. USEPA's review of this rule shows that the basis on which the 1000 gallon exemption is determined is not stated, i.e., per person, crew, district, or County. Furthermore, a lack of training is not sufficient reason for an exemption.

- Section (R)(4), Gasoline Dispensing Facilities

USEPA previously conditionally approved this rule on October 31, 1980 (45 FR 72122–72143). On June 1, 1984 (49 FR 22814), USEPA removed the conditions on USEPA's approval of this rule for most of Ohio except for the Akron, Cincinnati and Cleveland attainment demonstration areas. This condition of approval remains outstanding for the Akron, Cincinnati, and Cleveland areas and will be addressed in future rulemaking action.

- Section (U)(2)(f), Surface Coating of Miscellaneous Metal Parts and Products

OEPA has amended the exemption for this rule by adding (f) (i) and (ii) which apply to new sources. Since USEPA is taking no action on section (A) as it applies to new sources of VOC, USEPA is also taking no action on these exemptions.

- Section (U)(2)(i), Surface Coating of Miscellaneous Metal Parts and Products

USEPA is taking no action on the exemption contained in section (U)(2)(i) granted by Ohio for the Honda of America Manufacturing, Inc. motorcycle assembly plant in Marysville. The exemption was granted under Ohio's new source review program and any further Federal action here is unnecessary.

- Section (V) Gasoline Tank Trucks

OEPA has amended the emission control requirements of section (V) to include a reference to the State's standards leak testing procedures, Method G [Rule 3745–21–10(G)], and a new alternative leak test procedure, Method H [Rule 3745–21–10(H)]. USEPA is disapproving this section and Rules

3745–21–10 (G) and (H), as adopted by the State on January 24, 1983. A discussion of Method H, and USEPA's rationale for disapproving Rule 3745–21–09(V), –10(G) and –10(H) as alternative leak testing procedures, are set forth in Part V.b of this notice. The effect of a final disapproval of these rules is that all owners and operators of such trucks will be subject to the control requirements in Rule 3745–21–09(V) of the existing SIP. When conducting leak tests all owners and operators of such trucks must use only the standard procedure in Rule 3745–21–10(G), as adopted by the State on March 27, 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

• Section(X)(2)(d), Rubber Tire Manufacturing Facility

OEPA added section (2)(d) which contains an exemption for the Cooper Tire and Rubber Company facility located in Findlay, Ohio (Hancock County). As stated previously, Hancock County was designated attainment of the NAAQS for ozone on June 12, 1984 (49 FR 24124), an accommodative ozone SIP was implemented in the county, and the county was provided a waiver of the one year preconstruction ozone monitoring requirement in USEPA's PSD program.

Because USEPA is now approving the exemption from RACT for the Cooper Tire and Rubber Company (and the Whirlpool Corporation plant discussed above) located in Hancock County, the State no longer has an accommodative ozone SIP for this county. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring required by the PSD regulations is terminated for Hancock County.

• Section (Z)(1)(a), Storage of Petroleum in External Floating Roof Tanks

This rule, as approved by USEPA for floating roof storage tanks (47 FR 28097; June 29, 1982), required the use of secondary seals for all tanks storing petroleum liquids. Ohio has amended this section to require only one seal, either a mechanical shoe primary seal, a liquid-mounted primary seal, or the equivalent, on the external floating roof tank if the petroleum liquid being stored is crude oil.

OEPA justified this amendment with data showing that retrofitting secondary seals on storage tanks with liquid mounted primary seals is substantially more expensive, per ton of VOC controlled, than retrofitting secondary seals on other tank types, or retrofitting tanks storing more volatile organic liquids USEPA agrees that cost effectiveness may be considered in modifications to RACT. However, Ohio has not demonstrated that this relaxation would not interfere with the timely attainment and maintenance of the NAAQS for ozone. Without such a demonstration, USEPA cannot approve the amendment. Therefore, USEPA is disapproving this amendment. USEPA will reconsider this amendment if the State submits the necessary demonstration.

c. Other Actions

• Section (AA)(2)(c), Dry Cleaning Facility

This rule as approved by USEPA for perchloroethylene dry cleaning operations (47 FR 28097; June 29,1982) exempted only those operations which were coin-operated or, due to insufficient steam or space, could not install a control device. OEPA has added section (2)(c) which exempts any facility in which less than 60,000 pounds of fabrics are cleaned per year.

On October 24, 1983 (48 FR 49007), USEPA proposed to add perchloroethylene to the list of organic compounds which have negligible photochemical reactivity and, thus, should be exempt from regulation under the ozone SIP. Therefore, USEPA is not taking action on Ohio's amendment regarding perchloroethylene at this time. However, after USEPA issues its final policy on perchloroethylene, USEPA will take action either approving or disapproving this rule revision.

• Section (D)(3), Alternative Daily Emission Limitation for Can Coating

USEPA approved OAC Rule 3745–21–09(D)(3), an alternative daily emission limitation for can coating facilities, on June 29, 1982 (47 FR 28097). However, during USPEA's review of the State's revision to the ozone SIP, USEPA identified the following deficiencies within this rule.

This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that they are based on volume of coating used (in gallons, excluding water), which in many cases can lead to erroneous results. Equivalency calculations for coatings should be performed on a basis of volume of coating solids used rather than volume of coating used. (45 FR 80824 gives an example calculation for can coating done on a volume solids basis.)

However, on April 9, 1986, OEPA submitted amendments to its RACT I and RACT II VOC Regulations. One of these revisions corrects the equation so that it is now on a constant volume solids basis. This revision will be discussed in a subsequent **Federal Register** notice.

V. Compliance Test Methods and Procedures, Rule 3745–21–10

OEPA has amended this Rule to include a number of minor revisions, corrections or calssifications; a rule reorganization; and, an alternative method for determining the leak tightness of gasoline tank trucks. USEPA is approving all changes made to Rule 3745–21–10 (B) through (F) and (I) through (K). USEPA is disapproving sections (G) and (H). The following sections of Rule 3745–21–10 have been significantly revised.

a. Final Approval

Sections:

• (A) (3) and (4); General Provisions.

• (B) (3), (4) and (5); Methods for detemining VOC content of surface coating and inks.

• (E) (4) and (7); Method for determining VOC emissions from bulk gasoline terminals.

• (K) Methods for detecting leaks of gasoline vapors.

b. Final Disapproval

• Section (G), Standard Method for the Determination of the Leak Tightness of Gasoline Tank Trucks (Method G)

As noted in Part IV.b. of this notice, USEPA is disapproving amended section (G) consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable. USEPA believes that the approved SIP currently contains the control requirements and leak test procedures that are consistent with Agency guidance, and other States' tank certification regulations.

The effect of a final disapproval of this rule is that all owners and operators of gasoline tank trucks would be subject to Rule 3745–21–09(V) and 10(G), as adopted by the State in March 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

• Section (H), Alternate Method for Determining Leak Tightness of Gasoline Tank Trucks (Method H)

In today's rulemaking action, USEPA is disapproving the State's alternative test method, Method H, contained in amended Rule 3745–21–10(H), because this method involves a pressure test of only the vapor recovery lines and associated equipment. To summarize the rule, gasoline tank trucks which were manufactured prior to January 1, 1975, must be pressurized to 15 inches of water and may not sustain a pressure

decrease greater than 3.0 inches of water over 3 consecutive minutes. Gasoline tank trucks which were manufactured on or after January 1, 1975, must be pressurized to 18 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes.

The pressure test does not involve pressurization of any compartment of the gasoline tank truck. In addition to the pressure test, the following items are to be inspected and repaired or replaced if found to be defective:

(1) Dome cover lids (gaskets, latch tension and pressure/vacuum vents),

(2) Fusible plugs,

(3) Vapor vent hoods and sealing bands,

(4) Vapor return hoses and any associated fittings and adaptors, and

(5) Any pressure and vacuum relief vents on the vapor recovery lines.

Also, the pressure/vacuum vents in the dome assembly covers must comply with certain minimum specifications.

This method is not consistent with USEPA's control technique guidance, nor with the tank truck certification regulations that are in effect in 19 other States. In addidion, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

VI. Public Comment Discussion

During the public comment period, a total of two comments were received on Ohio's RACT I and II VOC regulations. These comments and USEPA responses are discussed in the record of this rulemaking.

A brief summary of the comments is discussed below.

1. Marathon Pipe Line Company's April 1, 1985, Comment

(a) Portion of Notice of Proposed Rulemaking Which Was Commented Upon Section (Z)(1)(a), Storage of Petroleum in External Floating Roof Tanks

As discussed above in Section IV.b., Ohio has amended this rule to require only one primary seal, or the equivalent, on an external floating roof tank if the petroleum liquid being stored is crude oil. OEPA justified the omission of the secondary seal requirement with cost-effectiveness data. USEPA agrees that cost-effectiveness may be considered in modifications to RACT. However, USEPA is disapproving this amendment, because Ohio has not submitted a demonstration that shows that this relaxation would not interfere with timely attainment and maintenance of the NAAQS for ozone.

(b) Summary of Marathon's Comment

Marathon states that it was not aware of the requirement that there be an explicit demonstration that the recision (or relaxation of the rule) would not interfere with the timely attainment and maintenance of the NAAQS for ozone. Marathon feels that the demonstration it presented the OEPA, at the time it requested the revision to the regulations, showed that for crude oil a primary seal is the equivalent of RACT. Since the States are free to choose the mix of controls necessary to achieve attainment and maintenance of the standards, including emission limitations that represent RACT, a demonstration of attainment and maintenance is implied by the State's evaluation of the request and subsequent adoption of the exemption. Marathon is prepared to make and, if necessary, amplify the demonstration made to OEPA at the time it requested the revision.

Marathon is, therefore, requesting that the decision with regard to the disapproval of this SIP revision be delayed, and that Marathon be given adequate time to make a presentation similar to that made to the OEPA at the time of the SIP revison request.

(c) USEPA Response

This proposed SIP revision constitutes a relaxation of Ohio's federally approved ozone SIP. For any relaxation to be approvable, a determination would have to be made that the relaxation will not interfere with timely attainment or maintenance of the ozone NAAQS. No such air quality assessment was performed by OEPA.

The demonstration discussed by Marathon deals with the issue of whether Ohio's proposed revision constitutes RACT for crude oil storage in external floating roof tanks. While the RACT requirement must also be satisfied for these revisons to be approvable, the point of USEPA's finding deals with the lack of an *air quality demonstration*, as discussed in the preceding paragraph.

USEPA is, therefore, unable to approve this relaxation without a demonstration that the relaxation will not interfere with attainment or maintenance of the ozone NAAQS. USEPA is unable to delay the processing of this SIP revision, unless OEPA requests that it be withdrawn.

USEPA will reconsider this request if the State resubmits it when it submits an approvable attainment demonstration for the area.

2. Comment from John McCarthy

(a) Portion of Notice of Proposed Rulemaking Which Was Commented Upon

Section (AA)(2)(c) Dry Cleaning Facility. As discussed above in Section IV.c., OEPA has added Section (2)(c) which exempts any perchloroethylene dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year. USEPA is taking no action on Ohio's amendment regarding perchloroethylene dry cleaning facilities until USEPA issues its final decisions on the reactivity and carcinogenicity of perchloroethylene.

(b) Mr. McCarthy's Comment

Mr. McCarthy stated that it might be prudent for a State not to make regulations less stringent for perchloroethylene because his understanding is that it is listed as a carcinogen.

(c) USEPA Response

Perchloroethylene is not formally listed as a carcinogen. However, it has been studied by the National Toxicology Program for carcinogenic properties, and is currently being considered for listing under section 112 of the Clean Air Act as a pollutant which is hazardous to human health. If perchloroethylene is listed under section 112, certain perchloroethylene source categories may be subject to additional emission limitations.

USEPA has not, as yet, published the final notice which will specify whether or not perchloroethylene is to be added to the list of organic compounds which have negligible photochemical reactivity, and, thus, should be exempt from regulation under the SIP. USEPA has no basis for requiring more stringent controls on perchloroethylene sources at this time.

VII. Summary of USEPA's Final Action

USEPA is approving all of the June 21, 1982, and January 24, 1983, revisions to Chapter 3745-21-01, 04, 09, and 10 as submitted by the Director of OEPA to USEPA on March 28, 1983, with the following exceptions:

a. USEPA is disapproving new exemptions for the use of cutback asphalt [OAC Rule 3745-21-09(N)(3) (a) and (e)], and for external floating roof (crude oil) storage tanks from the secondary seal requirement [OAC Rule 3745-21-09(Z)(1)(a)]. USEPA is also

disapproving compliance test methods [OAC Rule 3745–21–09(V) and Sections G and H; OAC Rule 3745–21–10] as alternative leak testing procedures for gasoline tank trucks.

b. USEPA is not taking action of the applicability of OAC Rule 3745–21–09(A) to new sources of VOC, the gasoline through-put exemption level for gasoline dispensing facilities [OAC Rule 3745–21–09(R)(4)], and the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville [OAC Rule 3745–21–09(U)(2)(i)].

c. USEPA is not taking action on OAC Rule 3745–21–09(AA)(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year.

d. USEPA is not taking action on OAC Ruel 3745–21–09(U)(2)(f) (i) and (ii), which apply to new sources (surface coating lines).

No matter what rules the State now enforces, the existing federally approved SIP regulations for any source will apply, and will be fully enforceable, until the source complies with the new regulations which USEPA approves as a result of today's final rulemaking on the Chapter 3745–21 revision. Furthermore, the existing SIP regulations will continue in force where USEPA disapproves certain new regulations.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Petitions for judicial review of this action under section 307(b)(1) of the Act must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Dated: December 12, 1988.

Lee M. Thomas,

Administrator.

Ohio—Subpart KK

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. This notice is issued under authority of the Clean Air Act, as amended (42 U.S.C. 7401–7642).

2. Section 52.1870 is amended by adding new paragraph (c)(73) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(73) On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OAC Chapter 3745–21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", contains Ohio's VOC RACT I and II regulations. The amendments to these regulations are embodied in the OAC as follows: Definitions, Rule 3745–21–01; Attainment dates and compliance time schedules, Rule 3745–21–04; Control of emissions of organic compounds from stationary sources, Rule 3745–21–09; and Compliance test methods and procedures, Rule 3745–21–10. See (c)(15). USEPA is not taking action on the applicability of Rule 3745–21–09 to new sources of VOC, to the gasoline throughout exemption level for gasoline dispensing facilities, and to the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville. USEPA is not taking action on OAC Rule 3745–21–09(AA))(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year. USEPA is not taking action on OAC Rule 3745–21–09(U)(2)(f) (i) and (ii) which apply to new sources (surface coating lines). USEPA is identifying deficiencies in the existing Rule 3745–21–09(D)(3) which contains an alternative daily emission limitation for can coating facilities. USEPA identified the following deficiencies within this rule: This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that they are based on volume of coating used (in gallons, excluding water), which in many cases can lead to erroneous results. Equivalency calculations for coatings should be performed on a basis of volume of coating solids used rather than volume of coating used. (45 FR 80824 gives an example calculation for can coating done on a volume solids basis.)

(i) Incorporation by reference.

(A) Amendments to OAC Chapter 3745–21, dated June 21, 1982 and January 24, 1983.

(1) Rule 3745–21–01; Definitions.

(i) Section (D)(16), (36), and (50), paper and vinyl coating.

(ii) Section (F)(1–8), asphalts in road construction and maintenance.

(iii) Sections (E)(8), and (J)(5), corrections to Sections (E)(8) and (J)(5).

(2) Rule 3745–21–04; Attainment dates and compliance time schedules.

(i) Section (C)(3), can coating lines.

(ii) Section (C)(15), cutback and emulsified asphalts.

(iii) Section (C)(29), gasoline tank trucks.

(iv) Section (C)(33), External floating roof tanks.

(3) Rule 3745–21–09; Control of emission of organic compounds from stationary sources.

(i) Section (B), Emission limitations.

(ii) Section (C) (1) and (3), Surface coating of automobiles and light duty trucks.

(iii) Sections (I) (1) and (2), Surface coating of metal furniture.

(iv) Sections (K) (1) and (3) and (K)(4) (a), (b) and (c), Surface coating of large appliances.

(v) Sections (N) (1), (2), and (3)(b) and (c), Use of cutback and emulsified asphalts. NOTE: USEPA is not approving (N)(3) (a) and (e).

(vi) Section (O)(2), Solvent metal cleaning.

(vii) Sections (P) (1), (4), and (5), Bulk gasoline plants.

(viii) Section (Q)(3), Bulk gasoline terminals.

(ix) Section (R)(3), Gasoline dispensing facilities.

(x) Sections (U)(1) and the exemptions contained in (2)(h), Surface coating miscellaneous metal parts and products.

(ix) Sections (X)(1)(a)(i), (b)(i), and the exemption contained in (2)(d), Rubber tire manufacturing.

(x) Sections (Z)(1) (b) through (h), (2), and (3), Storage of petroleum liquids in external floating roof tanks. NOTE: USEPA is not approving (Z)(1)(a).

(xii) Sections (AA)(1) and (2)(b) and (c), Dry cleaning facility. NOTE: USEPA is not proposing to approve (AA)(2)(a).

(xiii) Section (K)(4) (a), (b), and (c), for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties.

(xiv) Section (X)(2)(d), Cooper Tire and Rubber tire manufacturing facility located in Hancock County.

(4) Rule 3745–21–10; Compliance test methods and procedures.

(i) Sections (A) (3) and (4), General provisions.

(ii) Section (B) (3), (4) and (5), Methods for determining VOC content of surface coating and inks.

(iii) Section (E) (4) and (7), Method for determining VOC emissions from bulk gasoline terminals.

(iv) Section (K), Methods for detecting leaks of gasoline vapors.

3. Section 52.1877 is amended by adding new paragraph (b) to read as follows:

§ 52.1877 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(b) The requirements of § 52.14 are not met by Rule 3745–21–09(N)(3) (a) and (e); Rule 3745–21–09(Z)(1)(a); Rule 3745–21–10, Section G; and Rule 3745–21–10, Section H, because these Ohio Rules do not provide for attainment and maintenance of the photochemical oxidant (hydrocarbon) standards throughout Ohio.

(1) USEPA is disapproving new exemptions for the use of cutback asphalt [(Rule 3745–21–09(N)(3) (a) and (e)], because Ohio did not provide documentation regarding the temperature ranges in the additional two months that the State permits the use of cutback asphalts, and a lack of training is not sufficient reason for the 1000 gallons exemptions.

(2) USEPA is disapproving Section V [Rule 3745–21–09(V)], because it contains an alternative leak testing procedure for gasoline tank trucks which USEPA finds to be unapprovable.

(3) USEPA is disapproving exclusion of the external floating roof (crude oil) storage tanks from the secondary seal requirement [Rule 3745–21–09(Z)(1)(a)], because Ohio has not demonstrated that the relaxation would not interfere with the timely attainment and maintenance of the NAAQS for ozone.

(4) USEPA is disapproving compliance test method Section G, [Rule 3745–21–10] as an alternative leak testing procedure for gasoline tank trucks, because such action on Section G, is consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable.

(5) USEPA is disapproving compliance test method Section H, [Rule 3745–21–10], which involves a pressure test of only the vapor recovery lines and associated equipment. Compliance test method Section H is inconsistent with USEPA's control technique guidances and with tank truck certification regulations that are in effect in 19 other States. In addition, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

[FR Doc. 89–1133 Filed 1–17–89; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3505–7]

Kentucky; Final Authorization of State Hazardous Waste Management Program for non-HSWA Cluster II

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (hereinafter "RCRA" or the "Act") as amended by the Hazardous and Solid Waste Amendments (hereinafter HSWA). EPA has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revision for non-HSWA Cluster II satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revision for non-HSWA Cluster II. Kentucky's application for program revision is available for public review and comment.

DATES: Final authorization for Kentucky shall be effective March 20, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business, February 17, 1989.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours Monday through Friday, at the following addresses for inspection and copying: Division of Waste Management, Kentucky Department for Environmental Protection, Fort Boone Plaza, Building #2, 18 Reilly Road, Frankfort, Kentucky 40601, Phone 502/564–6716; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC, 20460, Phone: 202/382–5926; U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: 404/347–4216.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, 404/347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

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

B. Kentucky

Kentucky initially received final authorization on January 31, 1985 (50 FR 2550). On February 24, 1988, Kentucky submitted a draft program revision application for additional program approval for federal regulations promulgated between July 1, 1985 and June 30, 1986, known as non-HSWA Cluster II. On November 7, 1988, Kentucky submitted a final program revision application for the aforementioned authority. Today, Kentucky is seeking approval of its program revisions for the following authorities in accordance with 40 CFR 271.21(b)(3).

Federal requirement	State authority
Closure, Post-Closure and Financial Responsibility Requirements: Settlement Agreement, 51 FR 16443–16459, May 2, 1986.	KRS 13A.210 KRS 224.017 KRS 224.033 KRS 224.862 KRS 224.866 KRS 224.867 401 KAR 30:010 401 KAR 34:070 401 KAR 34:080 401 KAR 34:100 401 KAR 35:070 401 KAR 35:080 401 KAR 35:090 401 KAR 35:100 401 KAR 35:120 401 KAR 38:020 401 KAR 38:040 401 KAR 38:090
Listing of Spent Pickle Liquor (K062), 51 FR 19320 as amended at 51 FR 33612, May 28, 1986 and September 22, 1986.	KRS 13A KRS 224.033 KRS 224.864(3) KRS 224.867 401 KAR 31:040

EPA has reviewed Kentucky's application, and has made an immediate final decision that Kentucky's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision until close of business February 17, 1989. Copies of Kentucky's application for program revision are available for inspection and copying at

the locations indicated in the "ADDRESSES" section of this notice.

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

C. Decision

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: December 15, 1988.

Joseph R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89-857 Filed 1-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 94

[CC Docket No. 87-47; FCC 88-390]

Amendment To Provide for a Minimum Antenna Gain of 34.0 dBi for the 10550 MHz-10565MHz and 10615 MHz-10630 MHz Segments of the 10550 MHz-10680 MHz Band and To Provide for New Sidelobe Suppression Standards for Antenna with Minimum Gain of 34.0 dBi

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This rulemaking order revises the Antenna Standards tables specified at 47 CFR 21.108(c) and 94.75(b). Antenna sidelobe suppression standards are also changed slightly. These rule revisions enable point-to-point microwave radio licensees of the 10550 MHz-10680 MHZ band to use smaller, less expensive antennas of 2.00 feet diameters instead of the 3.25 feet diameter antennas previously required.

EFFECTIVE DATE: February 7, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Frank Peace, Tele: 202-634-1779.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket 87-47, FCC 88-390, Adopted November 29, 1988, and Released December 30, 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 Services, 202-857-3800, Suite 246, 1919 M Street NW., Washington, DC 20037.

Summary of Report and Order

1. This rulemaking order reduces the minimum antenna gain from 38 dBi to 34 dBi for point-to-point microwave radio services between 10550 MHz and 10680 MHz, and relaxes the relevant antenna sidelobe suppression standards. These revisions should not result in increased interference levels to co-channel and adjacent channel users in this 10 GHz band.

Ordering Clauses

2. Authority for this rulemaking is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

3. Accordingly, it is ordered that §§ 21.108(c)(3) and 94.75(b) of the Commission's Rules and Regulations is amended, effective February 7, 1989, as shown below. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Parts 21 and 94

Radio.

Rule Changes

Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES (OTHER THAN MARITIME MOBILE)

The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

Section 21.108(c) is amended by revising the table of Antenna Standards to read as follows:

§ 21.108 Directional antennas.

* * * * *

(c) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (Included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
2,500 to 5,000	A	NA	36.0	23	29	33	36	42	55	55
	B	NA	36.0	20	24	28	32	32	32	32
5,000 to 10,550	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
10,550 to 10,565 [4]	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,565 to 10,615	NA	360	NA	NA	NA	NA	NA	NA	NA	NA
10,615 to 10,630	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,630 to 10,680	NA	NA	34.0	20	24	28	32	35	36	36
17,700 to 18,820	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
18,920 to 19,700 [1]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
21,200 to 23,600	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
31,000 to 31,300 [2] [3]	NA	4.0	38.0	NA	NA	NA	NA	NA	NA	NA
Above 31,300	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36

[1] Digital Termination User Station antennas and point-to-point microwave radio station antennas in this band shall meet performance Standard B and have a minimum antenna gain of 34 dBi.
[2] The minimum front-to-back ratio shall be 38 dBi.
[3] Mobile, except aeronautical mobile, stations need not comply with these standards.
[4] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989, for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibles.

Note: Stations must employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

Section 94.75(b) is amended by revising the table of Antenna Standards to read as follows:

§ 94.75 Antenna limitations.

* * * * *

(b) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (Included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
952 to 960 [1] [4]	A	14.0	NA	.....	6	11	14	17	20	24
	B	20.0	NA	.....	.....	6	10	13	15	20
1,850 to 2,690 [2]	A	5.0	NA	12	18	22	25	29	33	39
	B	8.0	NA	5	18	20	20	25	28	36
6,525 to 6,875	A	1.5	NA	26	29	32	34	38	41	49
	B	2.0	NA	21	25	29	32	35	39	45
10,550 to 10,565 [9]	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,565 to 10,615 [3]	NA	360	NA	NA	NA	NA	NA	NA	NA	NA
10,615 to 10,630	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,630 to 10,680 [3]	NA	NA	34.0	20	24	28	32	35	36	36
12,200 to 13,250 [6]	A	1.0	NA	23	28	35	39	41	42	50
	B	2.0	NA	20	25	28	30	32	37	47
17,700 to 19,700 [3]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
21,200 to 23,600 [5]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
31,000 to 31,300 [7] [8]	NA	4.0	38.0	NA	NA	NA	NA	NA	NA	NA

ANTENNA STANDARDS—Continued

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (Included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
27,500 to 29,500	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
38,600 to 40,000	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36

[1] Except for frequencies listed in § 94.65(a)(1), where omnidirectional antennas may be used.
[2] Except for 2150 MHz–2160 MHz, where the maximum beamwidth is 360 degrees and except for frequencies in the 2500 MHz–2690 MHz band, where standards contained in § 94.95 apply.
[3] Except as provided in § 94.199 for Digital Termination System antennas.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in § 94.91.
[6] Except for temporary-fixed operations in the band 13200 MHz–13250 MHz with output powers less than 250 mW and as provided in § 94.90.
[7] The minimum front-to-back ratio shall be 38 dBi.
[8] Mobile, except aeronautical mobile, stations need not comply with these standards.
[9] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989 for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibels.

Note: Stations in this service must employ an antenna that meets the performance standards for Category A, except that, in areas not subject to frequency congestion antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

Donna R. Searcy,

Secretary.

[FR Doc. 89-989 Filed 1-17-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-199-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF340A series airplanes, which would require inspection of the insulation in the Environmental Control System (ECS) compartment and securing of the Gamah Couplings with a locking wire. If inspection reveals leakage of hot air into the fuselage, an additional inspection would be required for delamination of the stringer-to-skin bonding, and repair, if necessary. This proposal is prompted by a report of hot air leakage into the ECS compartment due to Gamah Coupling separation, which resulted in delamination of the stringer-to-skin bonding due to overheated adhesive. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

DATE: Comments must be received no later than March 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania AB, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on SAAB-Scania Model SF-340A series airplanes. There has been one report of hot air leakage from the Air Cycle Machine (ACM) ducting due to Gamah Coupling separation. This resulted in bonding separation between the stringers and skin panel due to overheated adhesive. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

SAAB-Scania has issued Service Bulletin SF340-21-022, dated October 31, 1988, which describes procedures for inspection of insulation in the Environmental Control System (ECS) compartment and securing of Gamah Couplings with a locking wire. If this inspection shows leakage of hot air, an additional inspection is required for possible delamination of stringer to skin bonding, and repair, if necessary, in accordance with SAAB Service Bulletin SF340-53-025, dated October 31, 1988. The LFV has classified both service bulletins as mandatory, and has issued Swedish Airworthiness Directive (SAD) No. 1-029 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the insulation in the ECS compartment and securing of the Gamah Couplings with a locking wire. If this inspection reveals hot air leakage, an additional inspection is required for delamination of the stringer to skin bonding and repair, if necessary.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,080.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule

pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF–340A series airplanes, serial numbers –003 through –138, inclusive, certificated in any category. Compliance in required as indicated below, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Within 30 days after the effective date of this AD, perform an inspection of the insulation in the Environmental Control System (ECS) compartment and secure the Gamah Couplings with a locking wire, in accordance with SAAB-Scania Service Bulletin SF340–21–022, dated October 31, 1988.

B. If the inspection required by paragraph A., above, reveals leakage of hot air, prior to further flight, inspect for delamination of the stringer to skin bondings, and repair, if necessary, in accordance with SAAB-Scania Service Bulletin SF340–53–025, dated October 31, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, S–581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1091 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 81135–8235]

Licensing of Private Remote Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) plans to reopen the regulations at 15 CFR Part 960 in response to a petition received on April 5, 1988. A consortium of news media organizations petitioned NOAA to amend its regulations for licensing private remote sensing space systems. The Petition alleges that the regulations are so vague in stating when national security restrictions might be imposed in a license that they chill commercial interest in remote sensing particularly in its use for news gathering purposes. The Petition requests review of the regulations for consistency with the President's January 5, 1988 National Security Decision Directive which encourages the commercial development of space including remote sensing.

FOR FURTHER INFORMATION CONTACT: John A. Milholland, Senior Counsellor, National Oceanic and Atmospheric Administration, Department of Commerce, 1825 Connecticut Avenue, NW., Room 603, Washington, DC 20235, (202) 673–5200.

SUPPLEMENTARY INFORMATION: On May 10, NOAA published a notice of receipt in the **Federal Register** inviting comment for 60 days on whether to reopen the regulations. One comment was received supporting the press' position that the regulations are unconstitutionally vague. On July 7, the Petitioners filed a supplemental letter citing the recent Supreme Court decision, *City of Lakewood* v. *Plain Dealer Publishing Co.*, 108 S. Ct. 2138 (1988) to support this position.

Decision

NOAA believes that the existing regulations, applied in accordance with the principles set forth in this Notice, respond to the concerns of the Petition and establish an encouraging climate for the growth of commercial remote sensing. However, NOAA will reopen the regulations to consider whether including these principles or other clarifications would be useful. As discussed below, NOAA continues to reject the contention that it must adopt additional review standards to satisfy constitutional requirements and to reject specifically the standard of review reintroduced by the Petitioners.

Discussion

A. Promoting A Business Climate

The Petitioners do not explain how any uncertainty over possible national security restrictions in a license would inhibit business interest. NOAA believes that any identified problem areas could be negotiated in the early planning stages of a project, as soon as sensor and other relevant parameters are identified, before any substantial investment is required. Therefore, this uncertainty could be resolved in the course of normal business planning.

However, NOAA acknowledges that the process is relatively untested and that some potential operators or investors might be deterred by a misperception that national security interests present significant barriers to private remote sensing ventures. Therefore, to reassure potential applicants, NOAA and the relevant agencies have reviewed their policies in light of the President's Directive and have agreed to consider amending the regulations to incorporate the following principles:

1. There is no *a priori* limit on the resolution of a civilian remote sensing space system.

2. Any conditions imposed in a license will be the least burdensome possible.

NOAA also will consider any other clarifications that would promote commercial confidence.

B. The Effect on the Press

NOAA continues to believe that the only proper time to challenge the regulations is when they are applied to a specific licensing decision if a requirement for some actual restriction is identified. Examining the regulations as applied in a specific context will focus attention on real, concrete issues should such exist while still providing adequate opportunity for judicial review before any restriction on operations might be imposed.

The Petitioners challenge the regulations without applying for a license citing *City of Lakewood* v. *Plain Dealer Publishing Co.*, supra. This case did sustain a constitutional challenge to a licensing ordinance on its face but the situations hardly are analogous.

The *City of Lakewood* ordinance authorized the city mayor to license the placement of newsstands on city property. It granted almost unlimited discretion to grant or deny these licenses which had to be renewed annually. The Court found that this ordinance presented "identifiable risks to free expression" whether or not the mayor actually abused his discretion because the very existence of this licensing requirement obviously had the potential to induce newspaper publishers needing these distribution outlets to engage in self censorship in anticipation of the license proceeding or renewal. Also, the total lack of standards could make it difficult to determine whether a license denial was legitimate or really an exercise in censorship. These risks could only be removed by modifying the basic ordinance.

In contrast, there is no risk posed to free expression by the existence of a requirement that operators of remote sensing systems obtain a license; potential applicants are not likely to curb their expression in anticipation of NOAA's license review and there is no renewal requirement, a major factor in the *Lakewood* case. The only way in which any censorship could occur is through a specific restriction placed on a particular license and any such restriction can be reviewed at the time of the licensing action to determine if it constitutes an abuse of discretion. Furthermore, any restriction must be rationally related to national security or foreign policy concerns to sustain legal challenge.

NOAA will not reconsider amending the regulations to incorporate the standard of review proposed by the Petitioners. This is the same standard proposed during the original rulemaking and is rejected for the same reason: NOAA does not accept Petitioners' view that any restriction on a press operator constitutes a prior restraint on publication. NOAA believes that a different standard applies to restricting access to information in the newsgathering process.

C. Clarification of Enforcement Procedures

The Petition raises a concern over the possibility of disruption during operations by termination of a license or possible search and seizure. This possibility could occur only if the licensee violated a specific condition in the license protecting national security or foreign policy concerns. Such a condition would be negotiated during the licensing process and would be subject to judicial review at that time as discussed earlier. Nevertheless, the inhibitory effect on investors and possibly the media suggests a need for further clarification of enforcement procedures. This will be undertaken.

Again, NOAA believes that it is more appropriate to have each license establish the detailed procedures applicable to the specific operating parameters, basing arrangements, and other characteristics of the system being licensed. It may also be appropriate to include dispute resolution mechanisms in the license to add to the certainty desired by the individual operator or investor. NOAA is willing to consider language in the regulations to provide greater assurance to potential applicants that their concerns can be addressed at the licensing stage.

Date: January 10, 1989.

Thomas N. Pyke, Jr.,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 89-894 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-08-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 872 3075]

Associated Mills, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Chicago, Ill. corporation to have a reasonable basis for any claims of performance characteristics of the Bottled Water Maker or any other water treatment appliance or product. Respondent would also be required to have a reasonable basis for claims of the expected life over which any environmental treatment product can treat or remove any contaminant or reduce any health-related risks.

DATE: Comments must be received on or before March 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 995-5220.

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

List of Subjects in 16 CFR Part 13

Water treatment products, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Associated Mills, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Associated Mills, Inc., a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Associated Mills, Inc., is a corporation organized

existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 165 N. Canal Street, Chicago, Illinois 60606.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

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

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

d. All claims under the Equal Access to Justics Act.

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

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

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

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

Order

Definitions

For purposes of this Order, the following definitions apply:

"Environment" shall mean the matter and conditions physically surrounding a person or object, and shall include water, air, soil, light, sound, atmospheric pressure, temperature, and humidity.

"Water treatment appliance or equipment" shall mean a product designed to treat or remove any contaminant in water.

"Environmental treatment appliance or equipment" shall mean a product designed to treat or remove any contaminant in the environment.

"Air cleaning appliance or equipment" shall mean portable household electric cord connected room air cleaners (excluding ashtrays), defined more specifically as machines that (a) operate with an electrical source of power and contain a motor and fan for drawing air through a filter(s); (b) incorporate electrically charged plates in addition to a fan with a filter(s); (c) incorporate a negative ion generator in addition to a fan with a filter(s); or (d) incorporate a negative ion generator only.

I

It is ordered that respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Pollenex Model WP120 Reverse Osmosis System or any other water treatment appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication the performance characteristics of such water treatment appliance or equipment, including that any such appliance or equipment can or will treat or remove any contaminant or reduce any health-related risk associated with any contaminant in water, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for each such representation.

II

It is further ordered that respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any environmental treatment appliance or equipment, except air cleaning appliances or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication the expected life over which any such appliance or equipment can or will (i) treat or remove any contaminant in the environment, or (ii) reduce any health-related risks associated with any contaminant in the environment, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for each such representation

III

For purposes of this Order a "reasonable basis" shall consist of competent and reliable evidence which substantiates the representation. To the extent that the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualfied to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

IV

It is further ordered that respondent, its successors and assigns, and its officers, representatives, agents and

employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product covered by this Order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this Order;

2. Of all test reports, studies, surveys or demonstrations in its possession that materially contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this Order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Associated Mills, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising for a home water treatment appliance, the Pollenex Model WP120 Bottled Water Maker Reverse Osmosis System ("the Bottled Water Maker"). Associated Mills is an Illinois corporation that manufactures, distributes, and sells various small consumer appliances.

The Commission's complaint in this matter charges Associated Mills with disseminating advertisements containing a false and misleading representation concerning the Bottled Water Maker. The complaint alleges that Associated Mills' advertising represented that the Bottled Water Maker will remove nearly all or most of the trihalomethanes contained in normal municipal tap water for a year of typical use. Trihalomethanes, a class of organic chemicals which includes chloroform, are suspected carcinogens commonly found in municipal tap water. The complaint alleges that Associated Mills' advertising represented that Associated Mills possessed and relied upon a reasonable basis for making the trihalomethane reduction claim for the Bottled Water Maker. In truth and in fact, the complaint alleges, Associated Mills did not have a reasonable basis for claiming that the Bottled Water Maker will remove nearly all or most of the trihalomethanes contained in normal municipal tap water for a year of typical use. This is alleged to be a false and misleading representation and an unfair or deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act.

The consent order contains provisions designed to remedy the advertising violation charged by preventing Associated Mills from engaging in similar acts and practices in the future. Part I of the order prohibits Associated Mills from representing any performance characteristic of the Bottled Water Maker or any other water treatment appliance or equipment unless at the time of making the representation it possesses and relies upon a reasonable basis for the representation.

Part II of the order prohibits Associated Mills from representing, for any "environmental treatment appliance or equipment," except for air cleaning appliances or equipment, the expected life over which any such device or equipment can or will (i) treat or remove any contaminant in the environment, or (ii) reduce any health-related risks associated with any contaminant in the environment, unless at the time of making the representation it possesses and relies upon a reasonable basis for the representation. The term "environmental treatment product" is defined as a product designed to treat or remove any contaminant in the environment. Air cleaning devices and equipment are excluded from this provision because similar claims for these products are covered by an earlier order issued against Associated Mills. *See* 106 F.T.C. 5 (1985).

Part III of the order defines the term "reasonable basis" for purposes of the order as competent and reliable evidence which substantiates the representation. Any scientific or professional test, experiment, analysis, research, study, or other evidence based on the expertise of professionals that is relied upon by the respondent to substantiate any claim shall be considered "competent and reliable" only if it is conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

Parts IV, V, and VI of the order are standard order provisions requiring Associated Mills to retain records demonstrating its compliance with this order, to notify the Commission of any changes in its corporate structure, and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-1071 Filed 1-17-89; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 882 3009]

Coleco Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a West Hartford, CT, corporation from claiming that any computer-related product is or will be

available for sale, or has or will have any capability, unless the product actually is available or has that capability, or the company has a reasonable basis for saying it will be available or will have that capability.

DATE: Comments must be received on or before March 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520–A, Cleveland, OH 44114. (216) 522–4207.

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

List of Subjects in 16 CFR Part 13

Computer toys, Modules, Trade practices.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Coleco Industries, Inc. ("proposed respondent"), a corporation, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 999 Quaker Lane South, West Hartford, Connecticut 06110.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

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

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft Complaint here attached.

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

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issue, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent Coleco Industries, Inc., a corporation, its successors and assigns, and its officers, agents, respresentatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of My Talking Computer, or any other computer or computer-related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any such product is available for sale to the public or has any capability, unless, at the time such representation is made, such product is then available for sale to the public in reasonable quantities or has said capability.

(b) That any such product will be available for sale to the public or will have any capability, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for said representation.

II

It further ordered that respondent, its successors and assigns shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying accurate records of all materials relied upon by respondent in disseminating any representation covered by this Order.

III

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

IV

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to

each officer and other personnel responsible for the preparation or review of advertising material. In addition, respondent shall distribute to each distributor, retail outlet and wholesale outlet to which it has sold or delivered My Talking Computer, and to each consumer about whom Coleco has records who has inquired about the availability of Modules 3 and 4 for My Talking Computer, a copy of Attachment A to this Order, a letter outlining the availability of said modules.

V

It is furthr ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Attachment A—Notice To Wholesalers, Distributors, Retailers, and Purchasers of My Talking Computer

Dear Wholesaler, Distributor, Retailer, or Consumer:

Coleco Industries, Inc., ("Coleco") is the manufacturer of an electronic learning product known as MY TALKING COMPUTER (Item No. 8200).

As the result of an agreement between Coleco and the Federal Trade Commission, arising out of consumer inquiries relating to certain accessories for MY TALKING COMPUTER know as Module 3 (Sesame Street Talking Cents with My TALKING CASH REGISTER) and Module 4 (Sesame Street Spells FUN!), Coleco hereby provides you with the following information:

—Module 3 will not be available for purchase.

—Module 4 is available in limited quantities for purchase by consumers by directly contacting Coleco for price and other information at the following location: Coleco Industries, Inc., Consumer Services, P.O. Box 500, Mayfield, NY 12117.

Coleco Industries, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Coleco Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for Coleco Industries' My Talking Computer, an electronic learning device, and add-on modules purported to be available to expand the capability of the computer.

The Complaint alleges that Coleco engaged in deceptive advertising in violation of section 5 of the FTC Act by falsely claiming that two of four advertised modules, Modules 3 and 4, were available for purchase at the time the claims were published or displayed. According to the complaint, the add-on modules were advertised on product brochures, product packages, and other sales literature as being available for purchase. Modules 3 and 4 were in fact, not available at the time the statements of availability were published or displayed. Module 3 has never been made available and Module 4 was not produced until over a year and a half after My Talking Computer was offered for public sale.

The consent order contains provisions designed to prevent future misrepresentations concerning the availability of products manufactured by Coleco Industries. It also contains provisions requiring notification of wholesalers, distributors, and retailers of My Talking Computer about the lack of availability of Module 3 and the method for obtaining Module 4.

Paragraph I of the consent order prohibits Coleco from representing that My Talking Computer or any other computer or learning enhancement product is available or has any capability unless at the time the claim is made the product has such a capability or is available for sale in reasonable quantities. Paragraph I also applies to claims of future availability or capacity by providing that Coleco must have a reasonable basis for any claim that a product will be available or will have a specified capability.

Paragraph IV of the Order requires Coleco to send a letter to each distributor, retail outlet, and wholesale outlet to which it sold or delivered My Talking Computer, explaining that Module 3 will not be made available and outlining the procedures necessary to obtain Module 4.

The remainder of the Order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89–1070 Filed 1–17–89; 8:45 am]

BILLING CODE 6750–01–M

VETERANS ADMINISTRATION

38 CFR Part 17

Health Professional Scholarship Program

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its medical regulations on the Health Professional Scholarship Program (38 CFR Part 17) to identify generic requirements for awarding scholarships, to identify a revised method for determining length of service obligation for scholarship participants provided awards to attend school full-time, and to indicate that when selecting scholarship participants, priority will be given to students entering their final year of education or training, and to delete the provision for scholarship participants to serve periods of obligated service in another Federal agency or the Armed Forces, if the Administrator of Veterans Affairs, the head of another Federal department and the participant consent to such service.

DATES: Comments must be received on or before February 17, 1989. Comments will be available for public inspection until February 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Charlotte Beason, Director, Health Professional Scholarship Program (14N), Office of Academic Affairs, Department of Medicine and Surgery, Veterans Administration (202) 233–3588.

SUPPLEMENTARY INFORMATION: The Veterans Administration Health Care Amendments of 1980 (Pub. L. 96–330) established the Veterans Administration Health Professional Scholarship Program to assist in providing an adequate supply of trained physicians and nurses for the VA and for the Nation and, if needed by the VA, other specified health-care professionals. The Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) amended the Scholarship Program by permitting scholarship awards to students in additional health disciplines, by

changing length of service obligation incurred by scholarship participants, and by changing priority for selecting participants. The proposed regulations implement provisions of Pub. L. 100–322.

The proposed regulations for the Veterans Administration Health Professional Scholarship Program have been designated as nonmajor under the criteria of Executive Order 12291, Federal Regulation. The regulations will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator hereby certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations will be directed to individuals who apply and are selected for VA Health Professional Scholarship Program awards. They will, therefore, have no significant direct impact on small entities.

The Catalog of Federal Domestic Assistance Number for this program is 64.023.

List of Subjects in 38 CFR Part 17

Health professions, Scholarships and fellowships.

Approved: December 19, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

PART 17—[AMENDED]

1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirement for the award of scholarships under the Veterans Administration Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for the VA and for the Nation. Disciplines include medicine, nursing, physical therapy, and other specified direct or indirect health-care service disciplines if needed by the Veterans Administration.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251 and Pub. L. 100–322)

* * * * *

2. a. In § 17.601, paragraph (a) is amended by removing the words "full-time."

b. In § 17.601, paragraphs (b), (e), (f), (h), (i), (m), (o), (r), and the authority citation in paragraph (u), are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(b) "Act" means the Veterans Administration Health-Care Amendments of 1980, Pub. L. 96–330, (38 U.S.C. 4141–4146), as amended by Pub. L. 97–251, the Veterans Administration Health-Care Programs Improvement and Extension Act of 1982, Pub. L. 99–576, Veterans Benefits Improvement and Health Care Authorization Act of 1986, and Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251, Pub. L. 99–576 and Pub. L. 100–322)

* * * * *

(e) "Administrator" means the Administrator of Veterans Affairs or designee.

(f) "Chief Medical Director" means the Chief Medical Director of the Department of Medicine and Surgery (DM&S), Veterans Administration, or designee.

* * * * *

(h) "Degree" means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, or a baccalaureate or master's degree in other direct or indirect health-care service disciplines needed by the VA.

(Authority: 38 U.S.C. 4302(a)(1))

(i) "Full-time student" means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

* * * * *

(m) "Scholarship Program" or "Scholarship" means the Veterans Administration Health Professional Scholarship Program authorized by section 216 of the Act.

* * * * *

(o) "School" means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Veterans Administration, and (2) which is accredited by a body or bodies recognized for accreditation by the Administrator.

(Authority: 38 U.S.C. 4302(a)(1)(2))

* * * * *

(r) "Part-time student" means an individual who is a Veterans Administration employee permanently assigned to a Veterans Administration health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

* * * * *

(u) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

3. In § 17.602, paragraph (a)(2) is revised, and the authority citations following paragraphs (a)(5), (b)(2) and (c) are revised, to read as follows:

§ 17.602 Eligibility.

(a)* * *

(2) Be pursuing a degree annually designated by the Administrator for participation in the Scholarship Program;

(Authority: 38 U.S.C. 4302(a)(1), 4312(b)(1))

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4302(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4312(c)(3)(B))

(c) * * *

(Authority: 38 U.S.C. 4302(b))

* * * * *

4. Section 17.603 is revised to read as follows:

§ 17.603 Availability of scholarships.

Scholarships will be awarded only when necessary to assit the Veterans Administration in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Chief Medical Director. The Administrator has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(Authority: 38 U.S.C. 4312(b)(4) and 4303(b)(1))

* * * * *

5. In § 17.604, the authority citation is revised to read as follows:

§ 17.604 Application for the scholarship program.

* * * * *

(Authority: 38 U.S.C. 4312(c)(1)(B))

6. In § 17.605, paragraph (a), the authority citation in paragraph (a)(2), paragraph (b)(1), the authority citation in paragraph (b)(4), and the authority citations in paragraph (d), and (e)(2), are revised to read as follows:

§ 17.605 Selection of participants.

(a) *General.* In deciding which Scholarship Program applications will be approved by the Administrator, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d) of this section, applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Administrator may, at the Administrator's discretion—

(Authority: 38 U.S.C. 4312(b)(5))

* * * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

(b) * * *

(1) Work/volunteer experience, including prior health care employment and Veterans Administration employment;

* * * * *

(4) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 4312(c)(1)(A) and 4314(3))

(e) * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

* * * * *

7. a. In § 17.606, paragraph (b) is amended by removing the word "will" in the first sentence, and replacing it with the word "may".

b. In § 17.606, the authority citation in paragraph (a)(1), paragraph (a)(3), and the authority citations in paragraphs (a)(5), (a)(6), and (b) are revised to read as follows:

§ 17.606 Award procedures.

(a) * * *

(1) * * *

(Authority: 38 U.S.C. 4336)

* * * * *

(3) The Administrator may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 4313(b).

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4314(2))

(6) * * *

(Authority: 38 U.S.C. 4313(c))

(b) * * *

(Authority: 38 U.S.C. 4333)

8. a. In § 17.607, paragraphs (e), (e)(1), and (e)(2) are removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.607 paragraphs (a), (b)(1), the authority citation in paragraph (b)(2), paragraphs (c) and (d), and the authority citation following newly designated paragraph (e), are revised to read as follows:

§ 17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Veterans Administration employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Administrator.

(Authority: 38 U.S.C. 4316(a))

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, a participant's obligated service shall begin on the date the Administrator appoints the participant as a full-time VA employee in the Veterans Administration's Department of Medicine and Surgery in a position for which the degree program prepared the participant. The Administrator shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Administrator shall notify the participant of the work assignment, its location, and the date work must begin.

(2) * * *

(Authority: 38 U.S.C. 4316 (b) and (c))

(c) *Duration of service.* The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 4312(c) (1)(B) and (3)(A))

(d) *Location for service.* The Administrator reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 4316(a))

(e) * * *

(Authority: 38 U.S.C. 4316(b)(3)(A)(ii))

9. a. In § 17.608, paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.608, paragraphs (a), (b), (c)(1), the authority citation in paragraph (c)(2), paragraph (d), and the authority citation in newly-designated paragraph (e), are revised to read as follows:

§ 17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Administrator may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 4316(a)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an

Affiliation Agreement with a Veterans Administration health care facility, and such training will be undertaken in a Veterans Administration health-care facility.

(Authority: 38 U.S.C. 4316(b)(u))

(c) * * *

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or proportionate ratio thereof) if the training is in a specially determined to be necessary to meet health care requirements of the Department of Medicine and Surgery, Veterans Administration; or

(2) * * *

(Authority: 38 U.S.C. 4316(b)(u)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Administrator's written approval of the alteration.

(Authority: 38 U.S.C. 4333)

(e) * * *

(Authority: 38 U.S.C. 4316(b)(2))

* * * * *

§ 17.609 [Amended]

10. In § 17.609, in the last sentence, remove the words "He or she" and insert in their place, the words "A physician".

11. In § 17.610, the authority citation in paragraph (a), paragraph (b)(4), the first sentence in paragraph (c), and the authority citation in paragraph (c), are revised to read as follows:

§ 17.610 Failure to comply with terms and conditions of participation.

(a) * * *

(Authority: 38 U.S.C. 4317(a))

(b) * * *

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(Authority: 38 U.S.C. 4317(b)(4))

(5) * * *

(Authority: 38 U.S.C. 4317(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$A = \left(\frac{t-s}{t} \right) \text{ in which:}$$

(Authority: 38 U.S.C. 4317(c)(1)(2))

* * * * *

12. In § 17.611, the authority citation is revised to read as follows:

§ 17.611 Bankruptcy.

* * * * *

(Authority: 38 U.S.C. 4334(c))

13. In § 17.612, the authority citations in paragraphs (a), (b)(2), (c), and (d), are revised to read as follows:

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) * * *

(Authority: 38 U.S.C. 4334(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4334(b))

(c) * * *

(Authority: 38 U.S.C. 4334(b))

(d) * * *

(Authority: 38 U.S.C. 4334(b))

[FR Doc. 89-1073 Filed 1-17-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3506-1; SC-017]

Approval and Promulgation of Implementation Plans; State of South Carolina Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by South Carolina that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that South Carolina has satisfied their obligations under section 406 of the Clean Air Act Amendments of 1977 to review their SIP with respect to EPA's revised stack height regulations.

DATES: Comments must be received on or before February 17, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations.

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

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court.

On July 2, 1984, the Supreme Court denied the petition (104 U.S. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height

credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

South Carolina has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. EPA is acting on South Carolina's submittal to comply with these requirements in a separate **Federal Register** notice. The State also found that no existing emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. South Carolina has indicated that the documentation is available for review at the State office (listed above). A summary of the State's findings is provided below.

A total of one hundred and nine (109) stacks were examined in the stack height review analysis. All one hundred and nine(109) stacks were reviewed for GEP formula height. No stacks were found to have stack heights greater than the calculated GEP height. All one hundred and nine (109) stacks were also reviewed for other prohibited dispersion techniques. No stacks were found that used a prohibited dispersion technique.

EPA is not acting on four sources (identified in table form or by asterisk because they currently receive credit under one of the provisions remanded to the EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir 1988). EPA will review these sources for compliance with any revised requirements when the EPA completes rulemaking to respond to the *NRDC remand*.

In conclusion, South Carolina has determined all remaining stacks to be in compliance with the stack height regulations. Therefore, no stacks were modelled as a result of South Carolina's review.

EPA Review

EPA has reviewed South Carolina's submittal and concurs with the conclusion that no revisions to South Carolina's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. South Carolina has therefore met its obligations under section 406 of Pub. L. 95–95 for existing source emission limitations. All potentially affected sources having stacks greater than 65 meters and total SO_2 allowable emissions greater than 5000 tons per year were inventoried and summarized in the Technical Support Document, which is available for public inspection at the EPA Region IV office in Atlanta, Georgia.

Today's action does not certify that South Carolina has adopted State rules to comply with the regulations contained in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA will act on South Carolina's submittal of the State rules in a separate **Federal Register** notice.

The technical support submitted by the State is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this notice. By publishing this proposed approval of the submittal and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA is proposing to approve declarations by South Carolina that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this state.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642

Dated: December 9, 1986.

Jack E. Ravan,

Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register January 12, 1989.

[FR Doc. 89–1134 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

Approval and Promulgation of State Implementation Plans; PSD Redesignation of the Spokane Indian Reservation, State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this notice is to propose approval and seek public comment on the April 27, 1988, request by the Spokane Tribal Business Council to redesignate the Spokane Reservation in the state of Washington to Class I under EPA's regulations for prevention of significant deterioration (PSD) of air quality. The Class I designation will allow only small increases in ambient levels of particulates and sulfur dioxide.

DATES: Comments must be postmarked on or before February 17, 1989.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington, 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–88–1), Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Washington Department of Ecology, 4224 6th Avenue, SE., Rowe Six, Building No. 4, Lacey, Washington, 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION: Part C of the Clean Air Act provides for the prevention of significant deterioration of air quality (PSD). The intent of this part is to prevent deterioration of existing air quality, particularly in areas currently considered to be pristine. The Act provides for three basic classifications applicable to all lands of the United

States. Associated with each classification are increments which represent the increase in air pollutant concentrations that would be considered significant. Class I applies to areas in which practically any change in air quality would be considered significant; Class II applies to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applies to those areas in which considerably more deterioration would be considered insignificant. Under the 1977 Amendments to the Clean Air Act, all areas of the country that met the national ambient air quality standards were initially designated Class II, except for certain international parks, wilderness areas, national memorial parks and national parks, and any other areas previously designated Class I. The Act allows states and Indian governing bodies to reclassify areas under their jurisdiction to accommodate the social, economic, and environmental needs and desires of the local population.

On April 27, 1988, the Spokane Tribal Council (herein referred to as the Tribal Council) submitted to EPA an official proposal to redesignate the Spokane Reservation from Class II to Class I. The Spokane Reservation is located entirely within the state of Washington. With their request, the Tribal Council submitted an analysis of the impacts of redesignation within and outside of the proposed Class I area, documentation of the delivery and publication of appropriate notices, a record of the public hearings held on September 10, 1986, and comments received by the Tribal Council on the proposed designation.

The following is a discussion of the requirements for redesignation and how the Tribal Council complied with those requirements.

Statutory and Regulatory Requirements for Redesignation

Section 164 of the Clean Air Act and 40 CFR 52.21(g) outline the requirements for redesignation of areas under the PSD program. Section 164(c) provides that lands within the exterior boundaries of reservations of Federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Under section 164(b)(2), EPA may disapprove a redesignation only if it finds, after notice and opportunity for hearing, that the redesignation does not meet the procedural requirements of section 161 or it is inconsistent with section 162(a) or 164(a). Section 162(a) establishes mandatory Class I areas and section 164(a) identifies areas that may not be redesignated to Class III. Because of the nature of the area proposed for redesignation to Class I, neither of these sections prohibit the proposed redesignation.

The statutory and regulatory procedural requirements for a Class I redesignation by an Indian governing body are as follows: (1) Notice must be afforded and a public hearing conducted relating to the area proposed to be redesignated and to areas which may be affected; (a) at least 30 days prior to the public hearing, a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public hearing notice; (3) prior to any redesignation, the document identified above must be reviewed and examined by the redesignating authorities; (4) if any federal lands are included in the redesignation, the redesignating authorities must provide written notice to the appropriate federal land managers and an opportunity to confer and submit written comments and recommendations with respect to the intended notice of redesignation prior to issuance of such notice. A list shall be published of any inconsistency between the redesignation and such written comments and recommendations from any federal land managers (together with the reasons for making the redesignation against the recommendation of the federal land manager).

Tribal Council Submittal

The April 27, 1988, request for redesignation includes evidence that all of the statutory and regulatory requirements for redesignation of an Indian Reservation from Class II to Class I have been met by the Tribal Council of Spokane Reservation. The Tribal Council is the Indian governing body for the Spokane Reservation and only lands within the exterior boundaries of the Reservation are proposed for redesignation.

The Tribal Council conducted two public hearings on September 10, 1986, one in Chewelah, Washington, and one in Wellpinit, Washington. Notice of the hearings appeared in area newspapers at least 30 days prior to the hearings. A description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation entitled, "Spokane Tribe of Indians Air Quality Redesignation Report," was completed in December 1985 and its availability was announced in the public hearing notices. In addition, the submittal included evidence that copies of the analysis document were sent to appropriate state, local and federal officials at least 30 days prior to the hearing. Evidence that the Tribal Council consulted with the state and local government officials prior to proposing the redesignation is also included in the submittal. Furthermore, the submittal shows that notice of the Tribal Council's intention to redesignate was sent to appropriate federal, state and local officials as well as relevant organizations, etc., during the spring of 1986. Therefore, the documentation submitted by the Tribal Council shows that all statutory and regulatory procedural requirements for redesignation have been met.

I. Summary of Action

Since EPA's review has not revealed any procedural deficiencies, the redesignation is hereby proposed for approval. The public is invited to comment on whether the Tribal Council has met all of the procedural requirements of section 164.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by February 17, 1989, will be considered in the final rulemaking action taken by EPA.

II. Administrative Review

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: September 12, 1988.

Robert S. Burd,

Acting Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register January 12, 1989.

[FR Doc. 89–1135 Filed 1–17–89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 424, 462, 466, 473, 476, and 489

[HSQ-132-P]

Medicare and Medicaid Programs; Denial of Payment for Substandard Quality Care and Review of Beneficiary Complaints

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the regulations to set forth the rules by which Utilization and Quality Control Peer Review Organizations would deny payment for substandard quality care. These changes are required as a result of the passage of the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted on April 7, 1986, and the passage of the Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987. In addition, we are proposing to set forth changes in regulations to govern Peer Review Organization review of beneficiary complaints about quality of care, in accordance with the Omnibus Budget Reconciliation Act of 1986, enacted on October 21, 1986.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 20, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-132-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-132-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Patricia Booth, (301) 966-6860.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act)) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standards Review Organizations and fiscal intermediaries. Those responsibilities generally have included the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are reasonable and medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries to establish the prospective payment amounts for hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality, utilization, and appropriateness of health care services. PROs use this information to develop and review profiles (for example, practice patterns) in order to focus on practitioners, hospitals, and the assignment of discharges to diagnosis related groups in order to assess the quality of care being furnished and to undertake necessary corrective action. PROs transmit their determinations to intermediaries and carriers responsible for making payments under the Act.

Regulations governing PRO activities are located in various parts of Title 42 of the CFR (that is, Parts 405, 462, 466, 473, 476, 489, and 1004).

Prior to the enactment of section 9403 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), Peer Review Organizations (PROs) have been authorized, under section 1154(a)(2) of the Act, to deny Medicare payment on the following bases:

- Reasonableness of services.
- Medical necessity of services.
- Appropriateness of the inpatient setting in which services were furnished or are proposed to be furnished.

PROs, however, were also required to assure that care provided to beneficiaries met professionally recognized standards of health care. If the care provided to a beneficiary did not meet such standards, the PROs were required to take corrective action through—

- Education and advice to the physician or provider;
- Intensified review if a pattern of quality problems was identified; or
- Imposition of sanctions such as exclusion of a provider of health care services from the Medicare program or recovery of inappropriate payments.

However, they were not authorized to issue a Medicare denial of payment for substandard quality care.

Under the PRO current contract and scope of work (that is, the scope of PRO review), PROs are required to perform reviews for quality of care. They use several vehicles for conducting these reviews, such as generic quality screens or discharge review criteria. On the basis of their review, the PROs determine whether the quality of the services furnished to beneficiaries meets professionally recognized standards of health care, and whether the quality of care is complete and adequate. When a quality concern is identified by a physician reviewer, the PROs impose quality interventions (other than denial of payment) including education, intensified review, or, if appropriate, sanctions.

Section 9403 of Pub. L. 99-272, however, amended section 1154(a)(2) of the Act ot give PROs the authority, effective April 7, 1986, to deny Medicare payment to a physician or hospital for services furnished that are of substandard quality. Under the law, the PRO determinations to deny Medicare payment for these services are to be made on the basis of criteria that are consistent with guidelines established by the Secretary. Under its provider agreement, a provider may not charge for services for which payment is denied because the services are of substandard quality.

In addition, under section 4096(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which amended section 1842(b), 1842(1) and 1870(f) of the Act, a physician who submits a claim or bill that is subsequently denied for substandard quality care must not charge a beneficiary any amount and must refund promptly any amount already collected from the beneficiary.

Section 9352(b) of Pub. L. 99-509 requires by statute (for contracts

entered into or renewed on or after January 1, 1987) that a PRO review the reasons for readmission of a patient to a hospital if the readmission occurs less than 31 days after the previous discharge. Prior to enactment of Pub. L. 99–509, PROs reviewed readmissions that occurred within 15 days of a discharge. Section 1154(a)(13) of the Act provides that a readmission review must be conducted for at least a sample of patients who are readmitted within 31 days after a discharge. That section further requires review of post-hospital care (that is, care furnished in a skilled nursing facility (SNF), home health agency (HHA), or hospital outpatient area) that occurs between two such hospital admissions.

In addition, section 9353(a)(2) of Pub. L. 99–509 amended section 1154(a)(4) of the Act to require a review of the quality of care provided by health maintenance organizations (HMOs) and competitive medical plans (CMPs). This review may be conducted by PROs or by other organizations that are awarded competitive contracts. We are not proposing to deny Medicare payment for substandard quality care in these cases because there is no "per service" payment to deny. Different interventions for quality issues are provided for in these settings (for example, education, intensified review, and sanctions), in accordance with contracts with HCFA, to resolve quality of care problems in HMOs/CMPs.

Moreover, the amendment to section 1866(a) of the Act made by section 9353(e) of Pub. L. 99–509 expands the PRO authority by requiring hospitals, SNFs and HHAs to modify their agreements with the PRO to perform quality of care reviews as a condition of receiving Medicare payment. Section 9353(d) of Pub. L. 99–509 also provides a basis for funding PROs for this type of review.

We are developing guidelines for PROs to use in setting up criteria for denials of substandard quality care provided by SNFs, HHAs, and outpatient area, and intend to issue a separate proposed rule concerning such denials.

Section 9353(c) of Pub. L. 99–509 amended section 1154(a) of the Act (adding a new paragraph (a)(14)) to require PROs, effective August 1, 1987, to conduct an appropriate review of all written complaints from beneficiaries or their representatives about the quality of services (for which payment may otherwise be made under Medicare) not meeting professionally recognized standards of health care. The PRO is to inform the beneficiaries or their representatives of the final disposition of the complaint including whether services meet professionally recognized standards of health care. Before the PRO determines that the quality of services does not meet professionally recognized standards of health care, the PRO must give the provider and physician reasonable notice and an opportunity for discussion. We recognize that implementation of this provision may result in the identification of a practitioner or other individual concerned. This identification would be unavoidable if the area of care is so unique or so specific that the notification would implicitly identify the individual concerned. We are proposing to revise the current PRO disclosure regulations (§ 476.133) to provide for this possibility.

Section 9353(e) of Pub. L. 99–509 amended sections 1866(a) and 1876(i) of the Act to require hospitals, SNFs, HHAs, risk-sharing HMOs (42 CFR Part 417, Subpart C), and CMPs to modify their agreements with PROs to have the PROs perform additional functions as a condition of receiving Medicare payment. These modified agreements would require the PRO to perform certain functions under section 1154(a)(4) of the Act (such as quality of care reviews under section 1154(a)(4)(A), and review of beneficiary complaints about quality of care under section 1154(a)(14)). However, under section 1876(i) of the Act, risk-sharing HMOs and CMPs are exempt from maintaining such an agreement if they are located in areas in which HCFA has a contract with a non-PRO organization under section 1154(a)(4)(C) of the Act. Therefore, PROs are required to review beneficiary complaints about the quality of services furnished in a hospital, SNF, HHA, HMO or CMP (except for an HMO or CMP in a non-PRO contract area). Complaints about the quality of HMO/CMP services would be reviewed by either the PRO (as we are proposing in this rule) or by a non-PRO organization under the terms of its contract with HCFA.

II. Proposed Changes to the Regulations

We are proposing to revise the following regulations to implement parts of section 1154(a) of the Act as amended by section 9403 of Pub. L. 99–272 and section 9353(c) of Pub. L. 99–509 and parts of section 1842(b)(3) and 1842(1)(1) as amended by section 4096(a) of Pub. L. 100–203:

- Section 405.337 (new), 424.55, and 424.64 to add that a physician who submits a claim or bill for service that is subsequently denied for substandard quality care would not charge a beneficiary any amount for those services and would refund promptly any amount already collected from the beneficiary. (Sections 424.55 and 424.64 were formerly §§ 405.1675(a)(1) and 405.1684, respectively, before a reorganization of regulations concerning conditions for Medicare payment published on March 2, 1988 (53 FR 6629).
- Sections 466.70, 466.83, 466.86, and 466.100 to add substandard quality care to the list of conditions under which PROs are authorized to issue denial determinations.
- Section 466.88 to provide that a physician, as well as a health care facility, must permit the PRO to examine their operations and records.
- Section 466.93 to allow the provider or physician an opportunity to discuss the proposed initial denial determination that the quality of care does not meet professionally recognized standards of health care.
- Section 466.98 to provide that for substandard quality care cases the initial denial determination is to be made by a physician who specializes in the same field as the physician whose services are under review, or a specialist or a panel of specialists, one of whom must be in the same field if the initial review is conducted by a nonspecialist physician or a specialist in a different field than the physician whose services are under review.
- Section 466.100 to require PROs to establish and apply written criteria (in accordance with guidelines established by HCFA) for determining whether the quality of care is substandard, and to require PRO physician specialist reviewers to use that criteria in making an initial denial determination of substantard quality care.
- Sections 462.105, 466.74, and 466.88 to prohibit PROs from subcontracting to health care facilities quality of care reviews that affect payment.
- Sections 473.12, 473.14 and 473.40 to add denial of payment for substandard quality care to the list of causes for which a beneficiary has a right to a reconsideration or a hearing.
- Sections 466.70, 466.106, and 476.133 to require PROs to conduct an appropriate review of all written complaints from beneficiaries about the quality of services. We would describe in these sections the process that PROs would be required to follow for investigating beneficiary complaints and responding to beneficiaries.

- Section 489.21 to require a provider not to charge a beneficiary for services for which payment is denied by a PRO because the quality of care is substandard.

III. Discussion of Proposed Changes

A. Quality of Care Review

1. Denial of Medicare Payment Because of Substandard Care

a. *HCFA Guidelines.* As discussed above, section 1154(a)(2) of the Act requires PROs to determine, on the basis of their review of the quality of care furnished by a provider or physician, whether Medicare payments are to be made. The PROs are to determine if the quality of services furnished to beneficiaries meets professionally recognized standards of health care that are consistent with guidelines established by the Secretary.

In order to establish guidelines for inpatient hospital services, we convened a panel of 14 physicians on June 24–25, 1986. The members of the panel represented a broad range of health care interests. The consensus of that panel was that HCFA should develop general guidelines to be used by the PROs as opposed to specific or narrow guidelines. We subsequently met with representatives of the health care industry and consumer interest groups in developing the guidelines.

In the addendum to this rule, we are setting forth the proposed guidelines for public comment. We will issue future rulemakings, as necessary, to set forth proposed changes to the guidelines. We will carefully review the comments and may incorporate suggested changes in the guidelines prior to their publication as an addendum in the final rulemaking. The proposed guidelines are broad and represent a general framework. They identify the major classes of admissions and the critical diagnostic and therapeutic principles within which each PRO is to develop more specific criteria reflecting local medical practice that PRO physician reviewers would use to determine whether the quality of care was substandard.

b. *Level of Severity.* Not every quality problem warrants a denial of payment. Some quality problems have no potential for a significant, adverse effect on a patient or do not present an imminent danger to the patient. Other instances result in an actual, adverse effect on a patient or present an imminent danger to the patient. We believe that Medicare payment should be denied for substandard quality care that results in either of the following:

- It results in an actual, significant, adverse effect on the beneficiary, that is, patient management that results in—
  - —Unnecessarily prolonged treatment of the patient;
  - —Complications in medical conditions;
  - —Readmission to the hospital;
  - —Physiological or anatomical impairment;
  - —Disability; or
  - —Death.
- It presents an imminent danger to the health, safety, or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, as as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with 42 CFR 1004.50.

Under this proposed rule, the PRO would be responsible for determining whether a quality problem results in an actual, significant, adverse effect to the beneficiary or presents an imminent danger to the beneficiary and if so, if deny Medicare payment on the basis that the care was of substandard quality. For those instances that reflect quality problems, but which do not result in an actual, significant, adverse effect or present an imminent danger to the beneficiary, we propose that Medicare payment be made and that PROs conduct an appropriate followup through their quality intervention processes already in place. As noted above, these intervention processes include, but are not limited to, education, intensified review, and, if appropriate, sanctions against the provider or physician. We note that these intervention processes (in addition to denial of payment) would be appropriate as well for instances of substandard quality care that result in an actual, significant, adverse effect or present an imminent danger to the beneficiary.

c. *Use of Health Care Professionals to Screen Cases.* Before a PRO physician conducts a review, health care professionals other than physicians typically screen cases for approval of Medicare payment based on necessity or appropriateness of care. A nurse reviewer performs an initial screen using existing PRO criteria to review cases for reasonableness, medical necessity, and appropriationss of setting, and also for the quality of care. The nurser reviewer may approve nonquestionable cases (that is, cases in which all the screen criteria are met) but must refer any questionable cases to a physician for review. For determinations about reasonableness, medical necessity, and appropriateness of setting, the physician reviewer makes a determination based on his or her knowledge, expertise, and experience rather than on set criteria.

The concept of peer review requires that, whenever possible, PROs use physician reviewers who practice in a setting similar to that in which the physician whose services are under review practices. This is the policy under which PROs currently conduct their reviews, and we believe this practice becomes even more significant in terms of quality of care cases. Under the current scope of work, for initial denial cases, the physician reviewer need not be a specialist in the field represented by the affected attending physician. However, a number of attending physicians have informed us that they believe it is inappropriate for the physician reviewer to conduct reviews other than in his or her specialty. In particular, it has been suggested that the quality of care reviews be conducted by physician reviewers with the same specialty as the affected attending or consulting physician responsible for delivery of the care in question. Therefore, we are proposing for initial denial determinations of substandard quality care that the physician reviewers be a specialist in the field represented by the affected attending or consulting physician responsible for delivery of the care in question, except when meeting this requirement would compromise the effectiveness or efficiency of PRO review. For example, if the PRO staff did not include a certain specialty physician-type, such as a cardiac surgeon, the effectiveness PRO review would be compromised in such a case.We are proposing that a PRO would have several options, however, as to how it meets this requirement. The PRO may use a specialist in the field represented by the affected attending or consulting physician responsible for the delivery of the care in question to perform the initial screening and make the initial denial determination. As an alternative, the PRO may use a nonspecialist or a specialist physician in a different field than that of the affected attending or consulting physician responsible for the delivery of the care in question to perform the initial screening. In this case, potential quality denial cases identified as a result of this screening process would then be subject to a second level review by either—

- A specialist physician in the field represented by the affected attending or consulting physician responsible

for the delivery of the care in question; or

- A committee of specialists, at least one of which must be in the same field as that represented by the affected attending or consulting physician responsible for the delivery of the care in question.

The review method (and the number of physicians to make up the panel for those PROs opting for committee review) must be specified in the PRO's plan, and subject to HCFA approval, to implement the denial authority. The physician specialist reviewer would make a determination about the quality of care based on criteria developed by the PRO in accordance with the HCFA guidelines described in the addendum to this proposed rule.

2. Provider and Physician Responsibility

The PRO determines whether the provider or the physician is responsible for furnishing substandard quality care. The physician is considered to be providing substandard care if, for example, he or she—

- Omits standard quality care;
- Furnishes substandard quality care; or
- Orders substandard quality care.

The hospital is considered to be responsible for the conduct of all services, (i.e., care or lack of care), in the hospital and, therefore, is responsible for all substandard quality care that is provided to a Medicare beneficiary. Medicare payment to the hospital would be denied for such services regardless of whether the hospital or physician provided the substandard quality care.

Prior to making an initial denial determination, the PRO affords the provider or supplier, or the beneficiary's attending or consulting physician responsible for delivery of the care in question, an opportunity to discuss the matter with a PRO physician (§ 466.93). The PRO physician considers the additional documentation or discussion in making an initial determination. If this information satisfies the PRO that quality care was furnished, the PRO would approve Medicare payment. If, however, the PRO physician specialist reviewer still believes, based on the quality of care criteria, his or her knowledge, medical expertise and judgment that a quality problem exists, the PRO would determine the level of severity for that problem. The beneficiary and the physician or the provider (or both, as appropriate) would be notified by the PRO of this determination and that payment is to be denied (as appropriate).

If a pattern of substandard quality care cases occurs, the PRO would apply interventions already in place to prevent further substandard quality care.

3. Financial Liability

Section 9403(b) of Pub. L. 99–272 amended section 1866(a)(1) of the Act by adding a new paragraph (I) (subsequently redesignated as paragraph (K)) that requires Medicare providers to agree—

> Not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B).

Accordingly, beneficiaries are not to be charged by providers for any of the costs of substandard care. That is, beneficiaries would not be liable for any charges by providers for care for which payment is denied because the care was of substandard quality. We are proposing to amend § 489.21 to implement this provision. (Existing regulations at §§ 489.40 and 489.41 require refunds of amounts that constitute incorrect collections under § 489.21.) Deductibles and coinsurance are not applicable and may not be collected or retained by providers with respect to this care. The providers may charge beneficiaries, however, for convenience items and other services not usually covered by Medicare.

For those cases in which the PRO physician specialist reviewer or panel, specializing in the same field as the physician whose services are being reviewed, determines that the services were of substandard quality and that the services resulted in an actual, significant, adverse effect on the beneficiary, or presented an imminent danger to the health, safety or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, so as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with § 1004.50, we would not pay either the hospital or, if appropriate, the physician who is responsible for providing the services.

In addition, under section 1842(b)(3)(B)(ii) of the Act as amended by section 4096 of Pub. L. 100–203, a physician who accepts assignment agrees not to charge a beneficiary for services denied because of substandard quality care and to refund any amount already collected for those services. Deductible and coinsurance are not applicable and may not be collected or retained. A physician who violates the terms of an assignment is subject to all of the following:

- Civil sanctions under section 1128A of the Act and 42 CFR Part 1003.
- Criminal penalties under section 1877 of the Act.
- Revocation of his or her assignment privilege under § 405.1681.

Under section 1870(f)(1) of the Act, as amended by section 4096(a) of Pub. L. 100–203, a physician who claims direct payment after the death of the beneficiary is subject to the same obligations that apply to assigned claims.

Under section 1842(l) of the Act as amended by section 4096(a) of Pub. L. 100–203, if a claim for physician services submitted on other than an assignment-related basis is denied because the services are of substandard quality, the physician must refund timely to the beneficiary any amounts he or she has collected for the services. Deductible and coinsurance are not applicable to these services and, if collected, may not be retained. A physician who knowingly and willfully fails to make timely refunds may be subject to sanctions under 42 CFR Parts 1001 and 1003.

A refund would be considered to be made timely if—

- The refund is made within 30 days after the date the physician receives the notice of denial unless the physician requests review of the denial within that 30-day period; or
- In the case of a physician who requested review of the denial within 30 days, the refund is made within 15 days after the date the physician receives notice of an adverse determination on his or her request for review of the denial.

We would add a new § 405.337 to the regulations and revise §§ 424.55 and 424.64 to implement the provisions concerning liability for physician services for which payment is denied because the services are of substandard quality.

In addition, under section 1842(b)(3)(B)(ii) of the Act as amended by section 4096(a) of Pub. L. 100–203, we would make a technical correction by revising § 424.55(b) to provide that a physician who accepts assignment must refund any amounts already collected from the beneficiary (or from someone on behalf of the beneficiary) if—

- Medicare payment has been made to the physician for services that have been determined to be not reasonable and necessary under the provisions of § 405.310(k);

- The beneficiary was found to be without fault in incurring the charges; and
- The determination that Medicare payment was incorrect was made subsequent to the third year following the year in which the payment notice was sent to the beneficiary.

4. Notification and Appeal

We would require that the PRO notify the beneficiary and the provider or the responsible physician (or both, as appropriate), and the fiscal intermediary or carrier (or both, as appropriate) that it has determined that a Medicare denial of payment was justified based on a determination that substandard quality care was furnished. In addition, the beneficiary would be notified of his or her liability for other charges, as appropriate. In section II of the addendum to this proposed rule, we are providing samples of the denial notice language that the beneficiary would receive.

We have met with industry representatives, physicians, and associations regarding the content of the beneficiary notification. We believe, based on the advice of these interest groups, that it would be inappropriate to include detailed information regarding the substandard quality care in the notification letters. Other notification issues that we considered include whether—

- The beneficiary should be informed specifically as to how the care was substandard;
- We should summarize the details of the findings; and
- We should advise the beneficiary to go to a physician of choice for further consultation.

We specifically request public comment on these issues.

Under section 1155 of the Act, a beneficiary, provider, or physician who is dissatisfied with a PRO initial denial of Medicare payment because of substandard quality care, may request a reconsideration by the PRO that made the initial denial determination. In addition, a beneficiary has the right to a hearing and judicial review on a determination regarding substandard quality care as specified in 42 CFR 473.

5. Subcontracting to Facilities

Prior to the enactment of Pub. L. 99–272, PROs were allowed to subcontract with a facility to conduct quality of care activities (that is, activities relating to quality of care reviews and studies). Because section 9403 of that statute will result in denial of Medicare payment for substandard quality care, we believe that it would be inappropriate (that is, a conflict of interest) for a facility to conduct such reviews of its own activities. Thus, we would require that the PRO be prohibited from subcontracting with a facility to conduct quality of care reviews that may affect Medicare payment.

B. PRO Review of Beneficiary Complaints

Section 1154(a)(14) of the Act, as added by section 9353(c) of Pub. L. 99–509, requires PROs to conduct an appropriate review of all written complaints from beneficiaries or their representatives about the quality of services (for which payment may otherwise be made under Medicare) furnished by hospitals, SNFs, HHAs, risk-sharing HMOs and CMPs (except for HMOs and CMPs in which a non-PRO is performing the review) not meeting professionally recognized standards of health care. Non-PRO organizations would conduct a review of beneficiary complaints about the quality of HMO/CMP services in accordance with their contracts with HCFA. We would require that, in conducting an appropriate review of a beneficiary's complaint, the PRO—

- Inform the beneficiary or the beneficiary's representatives whether or not the quality of care meets professionally recognized standards of health care, and the corrective action to be taken if necessary (that is denial of payment, education, intensified review, or sanctions);
- At least 30 days prior to disclosure, provide the physician or provider concerned with notice of disclosure an opportunity for discussion on whether the quality of services does not meet professionally recognized standards of health care;
- Disclose beneficiary-specific confidential information to the beneficiary or the beneficiary's representative, as provided under § 476.132.

We note that the nature of the complaint may be so unique or the service in question so specific that implicit identification of an individual physician concerned could be an unavoidable consequence of compliance with section 1154(a)(14) of the Act.

We considered precluding PROs from providing any information to the beneficiary that might identify the concerned physician or practitioner. However, we believe that section 1154(a)(14) of the Act requires that the information discussed above be provided to the beneficiary, which, in some cases, may have that unintended effect. We are proposing to amend §§ 466.70 and 466.106 and the PRO confidentiality regulations at § 476.133 to set forth these requirements.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not small entities, but we treat all hospitals and physicians as small entities. Athough PROs are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply, because they are funded by us, and are our contractors, we customarily treat them as small entities.

We do not consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least three percent. We anticipate that PROs would deny claims on the basis of substandard care for no more than one per cent of the cases they review. Since they review about a quarter of all Medicare hospital discharges, we expect those denials would represent no more than one-fourth of one percent of all Medicare discharges, and since Medicare hospital inpatient discharges account for less than one-half of all hospital discharges, an even smaller portion of total discharges. Therefore, we do not anticipate an increase or decrease of three percent.

We have determined that the changes in this regulation do not meet any of the criteria for a major rule under Executive Order 12291. In addition, for the above reasons, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have,

therefore, not prepared a regulatory flexibilty analysis.

In addition, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must also conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Paperwork Reduction Act

The payment denial and compliant letters, as well as §§ 466.94(a)(1)(ii) and 466.100(c) of this proposed rule contain information collection requirements subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980. However, § 466.94(a)(1)(ii) is currently approved under OMB control number 0938–0445. Notices will be published in the **Federal Register** when approval is obtained for the information requirements contained in the letters and in § 466.100(c). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HCFA.

B. Public Comment

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 462

Grant programs-health, Health care, Health professions, Peer Review Organizations.

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer Review Organizations.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

A. Part 405, Subpart C is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

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

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

2. The table of contents for Part 405, Subpart C is amended by adding the title of new § 405.337 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

§ 405.337 Liability for substandard quality care.

* * * * *

3. Section 405.337 is added to read as follows:

§ 405.337 Liability for substandard quality care.

(a) *Basic rule.* If payment is denied by a PRO under § 466.70 of this chapter because the services were determined to be of substandard quality, the provider or physician who furnished the services may not charge the beneficiary.

(b) *Services furnished by a provider.* Additional rules that are applicable to a provider that furnishes services that are of substandard quality are located in Subpart B of Part 489 of this chapter.

(c) *Services furnished by a physician who accepts assignment.* Additional rules that are applicable to a physician who furnishes services that are of substandard quality and accepts assignment, or claims payment after the death of the beneficiary, are located in Subpart P of this part.

(d) *Services furnished by a physician on other than an assignment-related basis.*— (1) *General.* A physician who furnishes services to an individual on other than an assignment-related basis must refund to the individual any amounts (including amounts for deductible and coinsurance) the physician has collected for services furnished for which Medicare payment is denied under § 466.70 of this chapter because the services were determined to be of substandard quality.

(2) *Time limits for making refunds.* A timely refund of any incorrectly collected amounts of money must be made to the beneficiary for whom the services were furnished. A refund is considered to be made timely if—

(i) The refund is made within 30 days after the date the physician receives the notice of denial unless the physician requests review of the denial within 30 days; or

(ii) In the case of a physician who requested review of the denial within 30 days, the refund is made within 15 days after the date the physician receives notice of an adverse determination on his or her request for review of the denial.

(3) *Applicability of sanctions to physicians who fail to make refunds.* A physician who knowingly and willfully fails to make refunds as required by paragraphs (d)(1) and (d)(2) of this section may be subject to sanctions as provided for in Parts 1001 and 1003 of this title.

B. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for Part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395n, 1395u, 1395x, 1395cc, 1395gg, 1395hh and 1395ii).

Subpart D—To Whom Payment is Ordinarily Made

2. In § 424.55, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and a new paragraph (b)(4) is added to read as follows:

§ 424.55 Payment to the supplier.

* * * * *

(b) In accepting assignment, the supplier agrees to the following: * * *

(3) Not to charge the beneficiary or any other source (and to refund amounts already collected) when Medicare paid for services later determined to be "not reasonable or necessary" if—

(i) The beneficiary was without fault in the overpayment; and

(ii) The determination that the payment was incorrect was made by the carrier after the third year following the year in which the carrier sent notice to the beneficiary that it approved the payment.

(4) Not to charge the beneficiary or any other source (and to refund amounts already collected) when Medicare paid for services later determined to be of substandard quality under § 466.70 of this chapter if the determination that the services were of substandard quality was made by the PRO after the third year following the year in which the carrier sent notice to the supplier that it approved the payment.

Subpart E—To Whom Payment is Made in Special Situations

3. In § 424.64, the introductory texts of paragraphs (c) and (c)(1) are republished, and paragraph (c)(1)(iii) is revised to read as follows:

§ 424.64 Payment after beneficiary's death: Bill has not been paid.

* * * * *

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if he or she— * * *

(iii) Agrees to the conditions of payment set forth in § 424.55(b).

B. Part 462, Subpart C is amended as follows:

PART 462—PEER REVIEW ORGANIZATIONS

Subpart C—Utilization and Quality Control Peer Review Organizations

1. The authority citation for Part 462 continues to read as follows:

Authority: Secs. 1102, 1152, and 1153 of the Social Security Act (42 U.S.C. 1302, 1320c-1, and 1320c-2).

2. In § 462.105, paragraph (c) is revised to read as follows:

§ 462.105 Prohibition against contracting with health care facilities.

* * * * *

(c) *Subcontracting.* A PRO may not subcontract with a health care facility to conduct any review activities for which the PRO is responsible that may affect payment.

C. Part 466, Subpart C is amended as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

1. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

2. The table of contents of Part 466 is amended by adding the title of new § 466.106 to Subpart C to read as follows:

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

Sec.

* * * * *

466.106 Review of beneficiary complaints.

3. In § 466.70, in paragraph (a), the text of the paragraph following the paragraph heading is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added; in paragraph (c), the introductory text of paragraph (c) is republished, paragraphs (c)(1) and (c)(2) are revised, paragraph (c)(5) is removed, and paragraphs (c)(6), (c)(7), and (c)(8) are redesignated as paragraphs (c)(5), (c)(6), and (c)(7), respectively; and paragraph (d) is revised to read as follows:

§ 466.70 Statutory bases, applicability and provisions.

(a) *Statutory basis.* * * *

(2) Section 1154(a)(14) of the Act requires PROs to conduct an appropriate review of any written complaint from a beneficiary or the beneficiary's representative about the quality of services (for which payment may otherwise be made under Medicare) not meeting professionally recognized standards of health care. The PROs must inform the beneficiary or the representative of the final disposition of the complaint as provided in § 466.106(d).

* * * * *

(c) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services or procedures proposed to be furnished or those furnished are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether, under § 466.100(b)(4), the quality of the services meets professionally recognized standards of health care for the completeness, adequacy, and quality of the care provided;

* * * * *

(d) *Payment determinants.* On the basis of the review specified under paragraphs (c) (1), (2), (3), (5), (6), and (7) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

* * * * *

4. In § 466.74, paragraph (d) is revised to read as follows:

§ 466.74 General requirements for the assumption of review.

* * * * *

(d) A PRO may not subcontract with a facility to conduct any review activities that affect payments. The PRO may subcontract with a nonfacility organization to conduct review in a facility.

* * * * *

5. Section 466.83 is revised to read as follows:

§ 466.83 Initial denial determinations.

A determination by a PRO that the health care services furnished or proposed to be furnished to a patient are not medically necessary, are not reasonable, are not at the appropriate level of care, or are of substandard quality, is an initial denial determination and is appealable under Part 473 of this chapter.

6. In § 466.86, the introductory texts of paragraphs (a)(1) and (b) are revised to read as follows:

§ 466.86 Correlation of Title XI functions with Title XVIII functions.

(a) *Payment determinations.*

(1) PRO initial denial determinations under this part with regard to the reasonableness, medical necessity, appropriateness of the setting, and quality of care, are also conclusive for payment purposes with regard to the following medical issues:

* * * * *

(b) *Review activities.* PRO review activities to determine whether inpatient hospital or SNF care services are reasonable and medically necessary, are furnished at the appropriate level of care, and are of an acceptable quality of care fulfill the utilization review requirements set forth in §§ 405.1137 and 482.30 of this chapter.

* * * * *

7. In § 466.88, paragraph (a) is revised to read as follows:

§ 466.88 Examination of the operation and records of health care facilities and practitioners.

(a) *Authorization to examine records.* A facility or physician claiming Medicare payment must permit a PRO or its subcontractor to examine its operation and records (including information on charges) that are pertinent to health care services furnished to Medicare beneficiaries and are necessary for the PRO or its subcontractor to—

(1) Perform review functions including, but not limited to—

(i) DRG validation;

(ii) Outlier review in facilities under a prospective payment system;

(iii) Implementation of corrective action and fraud and abuse prevention activities; and

(iv) Identification of cases that are of substandard quality;

(2) Evaluate cases that have been identified as deviating from the PRO norms and criteria, or standards; and

(3) Evaluate the capability of the facility to perform quality review studies under a subcontract with the PRO.

* * * * *

8. In § 466.93, the introductory text is redesignated as paragraph (a); paragraph (a) is redesignated as paragraph (a)(1); paragraph (b) is redesignated as paragraph (a)(2); and a new paragraph (b) is added to read as follows:

§ 466.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.

* * * * *

(b) Before a PRO reaches a determination that the quality of care does not meet professionally recognized standards of quality it must—

(1) Determine whether the substandard care is attributable to the provider, supplier, patient's attending or consulting physician, or other physician, or a combination thereof;

(2) Promptly notify the party or parties identified in paragraph (b)(1) of this section;

(3) Afford an opportunity for a party or parties identified in paragraph (b)(1) of this section to discuss the matter with a PRO physician in order to explain the nature of the treatment furnished or to provide rationale for the failure to provide adequate treatment; and

(4) In the case of a provider being identified as the party responsible for the furnishing of substandard care, allow other hospital staff to comment on potential quality of care problems. Nonphysician PRO staff may assist in receiving and considering provider comments.

9. In § 466.94, the introductory text of paragraph (a)(1) is republished, and paragraph (a)(1)(ii) is revised to read as follows:

§ 466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.

(a) *Notice of initial denial determination.*—(1) *Parties to be notified.* A PRO must provide written notice of an initial denial determination to— * * *

(ii) The responsible attending physician, or other responsible attending health care practitioner;

* * * * *

10. Section 466.98 is amended by adding paragraph (a)(4) to read as follows:

§ 466.98 Reviewer qualifications and participation.

(a) *Peer review by physician.* * * *

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, before an initial denial determination is made in a case of substandard quality care, a physician review must be conducted by a specialist in the same field as the physician whose services are under review, or by a panel of specialists, one of whom must be in the same field as the physician whose services are under review.

(ii) If the physician providing patient care is a general practitioner, the physician review may be conducted by a nonspecialist physician.

* * * * *

11. In § 466.100, the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2) are revised and new paragraph (b)(4) is added; the introductory text of paragraph (c) is republished, paragraphs (c)(1), and (c)(2) are revised, and a new paragraphs (c)(3) and (e) are added to read as follows:

§ 466.100 Use of norms and criteria.

* * * * *

(b) *Use of criteria.* In assessing the need for and appropriateness and quality of care of an inpatient health care facility stay, a PRO must apply criteria to determine the following:

(1) The necessity for facility admission and continued stay (in cases of day outliers in hospitals under prospective payment).

(2) The necessity for surgery and other invasive diagnostic and therapeutic procedures.

* * * * *

(4) Whether the quality of care fails to meet professionally recognized standards of care and results in either of the following:

(i) An actual, significant, adverse effect on the beneficiary, that is, patient management results in—

(A) Unnecessarily prolonged treatment;

(B) Medical complications;

(C) Readmission;

(D) Physiological or anatomical impairment;

(E) Disability; or

(F) Death.

(ii) An imminent danger to the health, safety, or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, so as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with § 1004.50 of this chapter.

(c) *Establishment of criteria and standards.* For the conduct of review a PRO must—

(1) Establish written criteria based upon typical patterns of practice in the PRO area, or use national criteria where appropriate;

(2) Establish written criteria and standards to be used in conducting quality review studies; and

(3) Establish written criteria, that comply with guidelines established by HCFA, to be used by the physician reviewer specialist in conducting quality of care reviews.

* * * * *

(e) A PRO must use norms and criteria in a manner that is consistent with the requirements of section 1154(a)(6) of the Act.

12. A new § 466.106 is added to read as follows:

§ 466.106 Review of beneficiary compliants.

In accordance with section 1154(a)(14) of the Act, for beneficiary complaints about the quality of services, the PRO must conduct a review of the complaint as required under § 466.70(a)(2) and—

(a) At least 30 days prior to notification of the beneficiary concerning disposition of the complaint, provide the practitioner or individual concerned with the complaint an opportunity for discussion before making a determination that the quality of services does not meet professionally recognized standards of health care; and

(b) In accordance with § 476.132(a) and (c) of this chapter, inform the beneficiary or the beneficiary's representative whether the quality of care meets professionally recognized standards of health care, and, if not, the corrective action to be taken.

D. Part 473, Subpart B is amended as follows:

PART 473—RECONSIDERATIONS AND APPEALS

Subpart B—Utilization and quality control peer review organization (PRO) reconsiderations and appeals

1. The authority citation for Part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.12, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 473.12 Statutory basis.

(a) Under section 1155 of the Act—

(1) A Medicare beneficiary, a provider, or an attending practitioner who is dissatisfied with a PRO initial denial determination made under the provisions of section 1154 of the Act, that services furnished or proposed to be furnished are not reasonable or necessary, are not delivered in the most appropriate setting, or are of substandard quality, is entitled to a reconsideration by the PRO that made the initial denial determination;

* * * * *

3. In § 473.14, the introductory text of paragraph (a) is republished and a new paragraph (a)(4) is added to read as follows:

§ 473.14 Applicability.

(a) *Basic provision.* This subpart applies to reconsiderations and hearings of a PRO initial denial determination involving the following issues:

* * *

(4) Quality of services.

* * * * *

4. In § 473.40, the introductory text of paragraph (b) is republished, and a new paragraph (b)(4) is added to read as follows:

§ 473.40 Beneficiary's right to a hearing.

* * * * *

(b) *Subject matter.* A beneficiary has a right to a hearing on the following issues:

* * *

(4) Quality of the services.

* * * * *

E. Part 476, Subpart B is amended as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

1. The authority citation for Part 476 continues to read as follows:

Authority: Secs. 1102, 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a), 1320c–5(a), and 1320c–9).

2. In § 476.133, a new paragraph (b)(4) is added to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers, and institutions.

* * * * *

(b) *Exceptions.*

* * *

(4) The PRO, in response to a beneficiary complaint (as described in § 466.106 of this chapter) that is so unique or the service in question so specific, may identify the individual practitioner or other practitioner, without their consent, as an unavoidable consequence of responding to the complaint.

3. In § 476.138, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 476.138 Disclosure for other specified purposes.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

(1) *Disclosure to licensing and certification bodies.* (i) A PRO must disclose confidential information upon request, to State or Federal licensing bodies responsible for the professional licensure of a practitioner or a particular institution. Confidential information, including PRO medical necessity and quality of care determinations that display the practice or performance patterns of that practitioner, must be disclosed by the PRO but only to the extent that it is required by the agency to carry out a function within the jurisdiction of the agency under Federal or State law.

* * * * *

F. Part 489, Subpart B is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

Subpart B—Essentials of Provider Agreements

1. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc and 1395hh).

2. In § 489.21, the introductory text is republished and a new paragraph (h) is added to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in Subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

* * * * *

(h) Services for which payment is denied by a PRO under section 1154(a)(2) of the Act because the services were determined by the PRO to be of substandard quality.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 22, 1988.

Otis R. Bowen,

Secretary.

Note: This document was transmitted to the Office of the Federal Register on January 12, 1989, for publication.

Addendum—Guidelines to be Used by PROs for Developing Criteria for Physician Specialist Reviewers to Deny Payment Because of Substandard Care; and Notices to Beneficiaries

I. Guidelines

The purpose of these guidelines is to provide a framework to the PROs for their formulation of criteria to be used in determining whether inpatient hospital care furnished to a beneficiary was of substandard quality. For those services in which substandard care is provided,

the PROs would determine whether the care furnished results in an actual, significant, adverse effect or present an imminent danger to the health, safety, or well-being to the beneficiary, as discussed in the preamble to this rule.

In developing the guidelines, our medical staff identified major classes of admissions, significant milestones in the course of hospitalization, and salient diagnostic and therapeutic principles that should be considered and acted upon by the physician in the management of a patient's course of treatment. The course of treatment should be documented as a part of the beneficiary's medical record. The PROs would review the medical records for the appropriateness of actions taken using critria developed by the PROs, to provide specificity and local relevance, in conjunction with the guidelines.

A. Admissions for Acute Medical Conditions

(1) Initial Assessment—adequacy of initial assessment of:
(a) Respiratory function
(b) Cardiac function
(c) Neurologic function
(d) Biochemical/metabolic status
(e) Gastrointestinal (GI) status
(2) Stabilization—restoration of:
(a) Respiratory function
(b) Cardiac function
(c) Fluid volume and chemical balance
(3) Definitive Diagnosis—identification of:
(a) The immediate cause of hospitalization:
(i) Failure of organ system
(ii) Infectious process
(b) Significant comorbidities
(c) Other major reversible problems
(d) Adequate diagnostic work up
(e) Documentation
(f) Comments
(g) Complications
(4) Definitive Therapy—
(a) Physiologic support
(b) Pharmacologic intervention
(i) Selection of agents
(ii) Determination of proper doses
(iii) Consideration of toxicity/drug interactions
(iv) Consideration of interactions with comorbidities
(c) Surgical evaluation—Specialty consultation
(d) Provision of device
(i) Selection and fitting
(ii) Training
(e) Referral/transfer
(5) Recovery—
(a) Titration of therapeutic agents and supports
(b) Management of intercurrent infections
(c) Management of complications related to comorbidities
(6) Discharge—
(a) Physiologic stability sufficient for ambulatory care
(b) Plan for followup and aftercare/sociologic setting
(c) Rehabilitation

B. Chronic Medical Conditions

(1) Adequacy of Assessment of Deterioration of Function—
(a) Measures of deficit and residual function/reserve
(i) Vital organs
(ii) Biochemical/metabolic status
(iii) Motor capability
(iv) Sensory limitation/pain
(v) Psychologic
(vi) Social situation
(b) Comorbidities
(2) Management—
(a) Pharmacologic
(i) Agent selection
(ii) Dose titration
(iii) Drug interactions
(iv) Interactions with comorbidities
(b) Device
(i) Selection and fitting
(ii) Training
(c) Surgical evaluation/referral
(3) Discharge—
(a) Assessment of restoration of function/physicologic stability
(b) Plan for followup and aftercare/sociologic setting

C. Elective Surgical Admissions

(1) Adequacy of Assessment of Physiologic/Functional Impairment—
(a) Underlying disorder and stage of progression
(b) Comorbidities
(c) Evaluation of medical/interventional radiologic management alternatives
(d) Need for procedure
(e) Documentation
(2) Preoperative Evaluation—
(a) Cardiac
(b) Pulmonary
(c) Neurologic
(d) Renal
(e) Endocrine/metabolic
(f) Hydration and electrolytes (anesthetic staging)
(g) Radiologic assessment
(3) Operative Protocol—
(a) Preparation
(i) Gastrointestinal (GI)
(ii) Antibiotic prophylaxis
(iii) Sedation
(b) Anesthesia
(i) Agent/route
(ii) Ventilation
(iii) Hemodynamic monitoring
(iv) Intravenous (IV) fluids (volume; electrolytes)
(c) Surgical procedure
(i) Appropriateness; adequacy
(ii) Support staff
(iii) Operative complications
(4) Post-Operative Management—
(a) Vital signs
(b) Stabilization
(i) Ventilation
(ii) Hemodynamics
(c) Neurologic status/sensorium
(5) Recovery—
(a) Physiologic support
(b) Wound management
(c) Management of current infections
(d) Management of comorbidities
(e) Other postoperative complications
(6) Discharge—
(a) Physiologic stability
(b) Wound stability
(c) Management of temporary functional deficit
(d) Plan for followup and aftercare/sociologic setting

D. Acute Surgical Admissions

(1) Initial Assessment—adequacy of initial assessment of:
(a) Cardiac output/blood volume
(b) Ventilation
(c) Biochemical/metabolic balance
(d) Neurologic status/sensorium
(2) Stabilization—
(a) Respiration
(b) Cardiac output/blood volume
(c) Biochemical/metabolic balance
(3) Identification of Affected Organ/Lesion—
(a) History/physical
(b) Radiology (imaging)
(c) Laboratory
(d) Other diagnostic procedures
(e) Documentation
(4) Preoperative Evaluation/Management—
(a) Cardiac
(b) Pulmonary
(c) Neurologic
(d) Electrolytes/hematology
(e) Renal function
(f) Assessment of medical or interventional radiologic alternatives
(5) Operative Protocol—
(a) Preparation
(i) Gastrointestinal (GI)
(ii) Antibiotic prophylaxis
(iii) Sedation
(b) Anesthesia
(i) Agent/route
(ii) Ventilation
(iii) Hemodynamic/cardiovascular
(iv) Intravenous (IV) fluids (volume, electrolytes)
(c) Surgical procedure
(i) Appropriateness, adequacy
(ii) Support staff
(iii) Operative complications
(6) Post-Operative Management—
(a) Vital signs
(b) Stabilization
(i) Ventilation
(ii) Hemodynamics
(c) Neurologic status/sensorium
(7) Recovery—
(a) Physiologic support
(b) Wound management
(c) Management of intercurrent infections
(d) Management of comorbidities
(e) Other postoperative complications
(8) Discharge—
(a) Physiologic stability
(b) Would stability
(c) Management of temporary functional deficit
(d) Plan for followup and aftercare/sociologic setting

E. Admissions for Trauma

(1) Initial Assessment—adequacy of initial assessment of:
(a) Anatomic damage
(b) Respiratory function
(c) Cardiac function/blood volume
(d) Neurologic status
(e) Biochemical/metabolic
(2) Stabilization—

(a) Correction or stabilization of anatomic injury
(b) Respiratory function
(c) Cardiac function/blood volume
(3) Evaluation/Diagnosis—
(a) Collateral injuries
(i) Radiology
(ii) Invasive procedures
(b) Comorbidities
(4) Corrective Treatment—
(a) Surgical (see Acute Surgical Admissions)
(b) Physiologic support
(c) Physical therapy/rehabilitation
(5) Discharge—
(a) Stability of injury
(b) Physiologic stability
(c) Functional capacity
(d) Followup and aftercare
(e) Rehabilitation
(f) Sociologic evaluation/support

F. Acute Psychiatric Admissions

(1) Assessment—adequacy of initial assessment of:
(a) Degree of functional impairment
(b) Underlying physiologic disorder
(c) Comorbidities
(d) History
(e) Medical status
(f) Documentation
(g) Mental status
(h) Assessment for potential for harm to self or others
(2) Management—
(a) Underlying physiologic disorder
(b) Pharmacologic
(i) Agent
(ii) Titration of dosage
(iii) Drug interactions
(iv) Interactions with comorbidities
(c) Surgical
(d) Other therapy: Electric shock therapy (ECT), analysis, psychotherapy, rehabilitation, etc.
(3) Disposition—
(a) Functional capacity
(b) Follow-up monitoring
(c) Aftercare/sociologic support

II. Notices to Beneficiaries

- In Quality Denial Model Letter—Hospital Services, the beneficiary would be notified of a PRO determination that Medicare payment was denied to a hospital because of substandard quality care.
- In Quality Denial Model Letter—Hospital and Physician Services, the beneficiary would be notified of a PRO determination that Medicare payment was denied to a hospital and a physician because of substandard quality care.
- In Review of Beneficiary Complaint Model Letter—Quality Meets Professionally Recognized Standards of Health Care, the beneficiary would be notified of a PRO determination that the quality of services meets professionally recognized standards of health care.
- In Review of Beneficiary Complaint Model Letter—Quality Does Not Meet Professionally Recognized Standards of Health Care, the beneficiary would be notified of a PRO determination that the quality of services does not meet professionally recognized standards of health care.

Quality Denial Model Letter—Hospital Services

Letterhead of the PRO

_____
(Date of Notice)
_____
(Name of Patient)
_____
(Address)
_____
(City, State and Zip Code)
_____
(Health Insurance Number)
_____
(Attending Physician)
_____
(Admission Date)
_____
(Medicare Provider Number)

Dear _____: The *(name of PRO)* is the Peer Review Organization (PRO) authorized by the Medicare program to review inpatient hospital services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

Our physician reviewers denied Medicare payment for your admission of (date of admission) to (name of hospital) for (condition or services received).

Our determination is based on a review of your medical records, which indicates that the quality of services you received does not meet professionally recognized standards of health care.

Denial decisions are made by the PRO physician. Your attending physician and hospital were given an opportunity to discuss your case with the PRO before the denial decision was made.

You are not responsible for payment of the cost of the hospital services provided to you except for the costs of any convenience services and items normally not covered by Medicare. If you have paid the hospital for any services (or deductibles and coinsurance) other than those mentioned above, arrangements can be made to pay you back. Please contact:

_____
(Name of FI)
_____
(Complete address)

If you disagree with our determination, you may request a reconsideration. You must submit your request in writing within 60 days from the receipt of this notice to the following address:

_____
PRO Name
_____
Address
_____

or,

You may make your request to—
(1) Any Social Security Office; or
(2) Any Railroad Retirement Office, if you are eligible for railroad retirement benefits.
Your request will be forwarded to us.

Quality Denial Model Letter—Hospital and Physician Services

Letterhead of the PRO

_____
(Date of Notice)
_____
(Name of Patient)
_____
(Address)
_____
(City, State & Zip Code)
_____
(Health Insurance Number)
_____
(Attending Physician)
_____
(Admission Date)
_____
(Medicare Provider Number)

Dear _____ The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review inpatient hospital services provided to Medicare patients in the state of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

Our physician reviewers denied Medicare payment for your admission of (date of admission) to (name of hospital) for (condition or services received) _____.

Our physician reviewers have also denied Medicare payment for physician services provided in connection with your admission to (name of hospital) by (name of physician).

Our determination is based on a review of your medical records, which indicates that the quality of services you received does not meet professionally recognized standards of health care.

Denial decisions are made by the PRO physician. Your attending physician and hospital were given an opportunity to discuss your case with the PRO before the denial decision was made.

You are not responsible for payment of the cost of the hospital and physician services provided to you except for the costs of any convenience services and items normally not covered by Medicare. If you have paid the hospital or physician for any of the services (including deductibles and coinsurance) other than those mentioned above, arrangements can be made to pay you back.

For hospital claims, please contact: (name of fiscal intermediary), (complete address of fiscal intermediary).

For physician charges, please contact: (name of carrier), (complete address of carrier).

If you disagree with our determination, you may request a reconsideration. You must submit your request in writing within 60 days from the receipt of this notice to the following address:

PRO Name

Address

or,

You may make your request to—

(1) Any Social Security Office; or

(2) Any Railroad Retirement Office, if you are eligible for railroad retirement benefits.

Your request will be forwarded to us.

Review of Beneficiary Complaint Model Letter—Quality Meets Professionally Recognized Standards of Health Care

Dear _____: This is in response to your letter of (date of letter) concerning the care you received during your admission of (date of admission) to (name of hospital).

The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (For example, a hospital or a skilled nursing facility).

We have reviewed your case and have found that the quality of services you received meets professionally recognized standards of health care. We will continue to monitor health care providers to assure that Medicare beneficiaries receive quality health care.

Please let me know if you have any further concerns or questions.

Sincerely yours,

Executive Director

Review of Beneficiary Complaint Model Letter—Quality Does Not Meet Professionally Recognized Standards of Health Care

Dear _____: This is in response to your letter of (date of letter) concerning the care you received during your admission of (date of admission) to (name of hospital).

The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

We have reviewed your case and have found that the quality of services you received does not meet professionally recognized standards of health care.

We have taken the following steps to correct this situation: (list *specific* corrective actions taken—education, intensified review, sanctions)

We will continue to monitor health care providers to assure that Medicare beneficiaries receive quality health care. Please let me know if you have any further concerns or questions.

Sincerely yours,

Executive Director

[FR Doc. 89-1148 Filed 1-13-89; 10:05 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87-213, FCC 88-404]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making that proposes to expand the use of trunking technology in the private land mobile services on frequencies above 800 MHz. Trunking is a highly efficient mode of operation. The demand for frequencies for trunked operations has been so great that in many urban areas no frequencies exist for establishing new systems or to expand existing congested systems. The Commission adopted this Notice of Proposed Rule Making to provide a measure of spectrum relief to those users requiring trunked systems. To accomplish this goal, the Commission has proposed to allow, under certain conditions, trunking on 150 channel pairs at 800 MHz that are currently reserved for conventional operations. The Commission has also proposed several changes to the intercategory sharing rules to help licensees of trunked systems gain access to needed frequencies.

DATES: Comments must be submitted on or before March 10, 1989, and replies to comments on or before April 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in PR Docket No. 87-213, adopted December 12, 1988, and released January 3, 1989. 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, 2100 M Street, NW., Suite 140, Washington, DC, 20037, telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. This *Notice of Proposed Rule Making* proposes to expand the use of trunking technology in the private land mobile radio services on frequencies above 800 MHz. The demand for private land mobile trunked frequencies in the 800 MHz band has increased dramaticly over the last ten years. The Commission has attempted to satisfy these continuing demands for trunked operations by allocating additional spectrum. In addition, the Commission has instituted a channel recovery program, allowed limited intercategory sharing, and permitted the partial assignment of trunked Specialized Mobile Radio systems (SMRs) authorizations. While these steps have provided some relief, the general lack of available 800 MHz spectrum for trunked operations is still a problem, particularly for SMRs.

2. The purpose of this proceeding is to provide additional spectrum relief to those users needing trunking frequencies. Specifically, the Commission proposes to allow trunking on 150 channels pairs at 800 MHz that currently are reserved for conventional operations only; trunked operations are not permitted on these channels. The Commission reasoned that allowing both trunking and conventional operations on these frequencies would serve the public interest by allowing demand to dictate how these frequencies are used. These 150 channel pairs would form a new category of frequencies, the General Category. For the first six months, the Commission proposed that only existing fully loaded trunked systems would be allowed to trunk these channels. After that time, new systems would be allowed to trunk these channels. The Commission also proposed to allow existing conventional licensees on these frequencies to combine their operations and form a single new trunked system.

3. The Commission also proposed to expand the intercategory sharing rules by allowing the assignment of a conventional authorization in the General Category to a licensee of a trunked system licensed in one of the other service pools, i.e., the Business Pool, the SMR Pool, the Public Safety

Pool, or the Industrial/Land Transportation Pool. Further, the conventional system need not be constructed if the assignment were to a licensee of a fully loaded trunked system. The Commission reasoned this would be in the public interest because it would foster a more spectrum efficient technology. Finally, the Commission proposed to allow licensees in the SMR pool to participate in the intercategory sharing program at 900 MHz.

Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public. Rather, if adopted as proposed the licensing burden on the public could be reduced.

Ordering Clauses

6. Authority for issuance of this *Notice of Proposed Rule Making* is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before March 10, 1989, and reply comments on or before April 7, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio services.

Amendatory Text

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—[AMENDED]

7. The authority citation for Part 90 is revised to read as follows:

Authority: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332 unless otherwise noted.

8. The table of contents to Part 90 is amended by revising the heading in § 90.615 to read as "Frequencies available in the General Category".

9. Section 90.609 is amended by revising the title, by adding a new paragraph (b)(3), and by revising paragraph (c) to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(b)(3) The authorization is for a conventional system assigned on a General Category frequency and the assignee, or transferee, is either an existing trunked licensee or an applicant proposing to use the frequency as part of a new trunked facility. The application must be accompanied with a demonstration that the assignor or transferor has not acquired the authorization for the principal purpose of profitable sale rather than constructing and operating a radio system and that its decision to assign the authorization was prompted by changing business circumstances.

(c) Licensees of constructed systems are permitted to make assignments, including partial assignments, of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. Frequencies need not be available on an exclusive basis to be assigned. In cases where other licensees may be affected the applicant must submit a signed statement listing all affected co-channel licensees (including call signs) and verifying that they all have agreed to the proposed assignment. An applicant authorized to expand an existing system or to create a new system with frequencies it obtains through assignment will receive the assignor's existing license expiration date and loading deadline. A licensee that makes an assignment, full or partial, will not be authorized to obtain additional frequencies for that same system for a period of one year from the date of assignment.

10. Section 90.611 is amended by revising paragraph (c) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(c) Each application will be reviewed to determine whether it can be granted. Applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories must specify the intended frequency (or frequencies) of operation. Applicants for frequencies in the SMRS Category may either specify the intended frequency (or frequencies) of operation in accordance with the provisions of § 90.621 or request the Commission to perform the selection.

* * * * *

11. Section 90.615 is revised to read as follows:

§ 90.615 Frequencies available in the General Category.

(a) Frequencies in the 806–809.750/851–854.750 MHz bands (Channels 1–150) are allocated to the General Category for conventional operations. The frequencies are available to all eligibles under this subpart (see § 90.603) for conventional operations in areas farther than 110 km (68.4 miles) from the US/Mexico border and farther than 140 km (87 miles) from the US/Canaeda border.

(b) Frequencies in this category may also be used for trunked operations in these same areas in accordance with the following:

(1) Entities may employ unlicensed General Category frequencies to establish new trunked systems provided there are no 800 MHz and 900 MHz frequencies available in their service category.

(2) Conventional licensees may combine channels to form a trunked system provided each of the licensed systems being combined is constructed and operating. All frequencies being trunked together must be located at a primary site.

(3) General Category frequencies may be used for trunked system expansion in accordance with § 90.621(g).

12. Section 90.621 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1) (i) and (iii), (c), (d), (e) and (h); revising the introductory text in paragraph (g); redesignating existing paragraphs (g) (3), (4), and (5) to (g) (4), (5), and (6), respectively; and adding a new paragraph (g)(3) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMRS Category may

either request specific frequencies by including in their applications justification for the frequencies requested or may request the Commission to select frequencies for the system from the SMRS Category.

(1) * * *

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617 or 90.619.

(ii) * * *

(iii) There are no limitations on the number of frequencies that may be trunked. Except as indicated in paragraph (a)(1)(iv) of this section, authorizations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour at 20 miles and to limit co-channel interference levels at this distance to 30 dBu. This would result in a mileage separation of 70 miles for typical system parameters. Separations may be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

(d) Conventional systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories that have met the loading level necessary for channel exclusivity will be protected in the same fashion as described in paragraph (c) of this section.

(e) Conventional systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

(f) * * *

(g) Frequencies in the 806–821/851–866 MHz bands listed as available for eligibles in the Public Safety, Industrial/Land Transportation, Business, General, and SMRS Categories are available for inter-category sharing under the following conditions:

(1) * * *

(2) * * *

(3) Channels in the General Category will be available to fully-loaded trunked Public Safety, Industrial/Land Transportation, Business, and SMR Categories systems for expansion if there are no in-category 800 MHz frequencies available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. A licensee will be authorized no more than one channel more than its current loading warrants. Unused (unlicensed) channels in the General Category are also available to establish new trunked systems provided there are not sufficient in-category 800 MHz and 900 MHz frequencies available. The maximum number of frequency pairs that will be assigned at one time for new systems is five.

* * * * *

(h) Frequencies in the 896–901/935–940 MHz bands listed as available for eligibles in the Industrial/Land Transportation, Business, and SMRS Categories will be available for inter-category sharing to all persons eligible in those categories starting May 6, 1990, under the following conditions:

(1) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(2) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

(3) For SMRs, the licensee willl be authorized no more than one channel more than its current loading warrants.

13. Section 90.629 is amended by revising the introductory text to read as follows:

§ 90.629 Extended implementation schedules.

Applicants requesting frequencies in the Public Safety Industrial/Land Transportation, Business, and General, Categories for either trunked or conventional operations may be authorized a period of up to three (3) years for placing a station in operation in accordance with the following:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–642 Filed 1–17–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects; New Jersey, New York, Puerto Rico, Pennsylvania, Indiana, and California; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA Projects in New Jersey, New York, Puerto Rico, Pennsylvania, Indiana, and California.

ACTION Regions 2, 3, 5 & 9 announce the availability of funds for fiscal year 1989 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the States of New Jersey, New York, Pennsylvania, Indiana, California, and the Commonwealth of Puerto Rico. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: New Jersey and New York—Joseph Gallick, ACTION Region 2, 6 World Trade Center, Rm. 758, New York, NY 10048–0206, (212) 466–3481; Puerto Rico—Ruben Nazario, ACTION State Office, Frederico De Getau Federal Office Bldg., Carlos Chardon Ave., Suite G49, Hato Rey, Puerto Rico 00917–2241, (809) 766–5314; Pennsylvania—Helen Griffin, ACTION Region 3, U.S. Customs House, 2d & Chestnut St., Rm. 108, Philadelphia, PA 19106–2912, (215) 597–0740; Indiana—Thomas Haskett, ACTION State Office, 46 East Ohio St., Rm. 457, Indianapolis, IN 46204–1922, (317) 269–6724; California—Ricardo Gerakos, ACTION State Office, Federal Bldg., Rm. 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, (213) 209–7421.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Regions 2, 3, 5, and 9 will be awarding grants for the placement of VISTA Volunteers in New Jersey, New York, Pennsylvania, Indiana, California, and the Commonwealth of Puerto Rico in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. *Homelessness*—development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. *Drug & Alcohol Abuse*—prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. *Economic Development*—appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and

organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of the grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total numer of VISTA Volunteers, cannot exceed $8,000.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, at least a 50% non-Federal match of the supervisor's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award a grant or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria For Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of a new VISTA program grant. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Regions 2, 3, 5, and 9 will review and evaluate all eligible applications prior to submission to the Acting Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5:00 p.m., local time, April 14, 1989. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current résumé of potential VISTA Supervisor, if available, or the current

résumé of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC, this 10th day of January 1989.

Donna M. Alvarado,

Director.

[FR Doc. 89-942 Filed 1-17-89; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 88-034N]

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act systems of records and deleting two of its systems of records maintained by the Food Safety and Inspection Service (FSIS).

EFFECTIVE DATE: This action will become effective without further publication in the Federal Register on March 20, 1989, unless notified by a subsequent notice to incorporate public comments. Comments must be received in duplicate by the contact person listed below on or before February 17, 1989.

ADDRESS: Written comments may be submitted to the United States Department of Agriculture, Food Safety and Inspection Service, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Catherine DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-9150.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, USDA proposes to take the following action:

I. USDA/FSIS—1, "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS," is being revised (1) to identify changes in record system location due to an internal reorganization of the Food Safety and Inspection Service in 1981, (2) to indicate that data will be stored electronically on various computer media, (3) to indicate changes in procedures for safeguarding the records in the system, and (4) to indicate a change of address of the Privacy Act Coordinator.

II. Two systems of records maintained by FSIS are being deleted. USDA/FSQS—2, "Employment History Records for Licensed Non-Federal Employees" is hereby deleted because these records are no longer maintained by FSIS. The records have been transferred to the Agricultural Marketing Service due to reorganization in USDA in 1981 and are designated as USDA/AMS-1. USDA/FSQS—3, "Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act" is hereby deleted because these records are no longer maintained by FSIS. The records were transferred to the Agricultural Marketing Service due to reorganization in USDA in 1981 and are designated as USDA/AMS-5.

USDA/FSIS—1 is being amended to change the record system, location, to indicate that data will be stored electronically on various computer media, to change the procedure for safeguarding records in the system, and to indicate a change of address of the Privacy Act Coordinator.

Accordingly, notice is hereby given that USDA amends its Systems of Records as follows:

USDA/FSIS—1

System name:

Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS.

System location:

Food Safety and Inspection Service, USDA, 14th and Independence Avenue, SW., Washington, DC 20250. Categories of individuals covered by the system:

* * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders, cards, microfilm, computer printouts; and electronically on various computer media.

* * * * *

Safeguards:

Records are maintained in locked offices.

* * * * *

System manager(s) and address:

Privacy Act Coordinator, USDA/FSIS, 14th and Independence Avenue, SW., Washington, DC 20250.

Systems exempted from certain provisions of the act:

This system has been exempted pursuant to 5 U.S.C. 552(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenace of such material may request access to the material. Such requests should be addressed to: Privacy Act Coordinator, USDA/FSIS, 14th and Independence Avenue, SW., Washington, DC 20250.

USDA/FSQS—2

System Name:

Employment History Records for Licensed Non-Federal Employees.

This system is hereby deleted.

USDA FSQS—3

System Name:

Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act.

This system is hereby deleted.

Done at Washington, DC, on January 9, 1989.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 89-842 Filed 1-17-89; 8:45 am]

BILLING CODE 3410-37-M

Forest Service

Scientific Advisory Board, Mount St. Helens National Volcanic Monument; Gifford Pinochot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9:00 a.m., February 21, 1989, at the Gifford Pinochot National Forest Supervisor's Office, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, to receive information on and discuss the following:

1. National Volcanic Monument Wildlife Plan.

2. NVM 1990 Research Plan.

3. Update on NVM Capital Investment program.

4. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinochot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206–696–7570. Written statements may be filed with the Board before or after the meeting.

Date: January 6, 1989.

John E. Lowe,

Acting Regional Forester.

[FR Doc. 89–1106 Filed 1–17–89; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

North Carolina Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Forum Subcommittee of the North Carolina Advisory Committee to the Commission which was to have been convened at 2:30 p.m. and adjourn at 6:30 p.m. on Friday, January 20, 1989, in the Sheraton Hotel, 301 North Elm Street, Greensboro, NC, is postponed until January 23, 1989.

The original notice for the January 20, 1989 meeting was published at 53 FR 53039 (December 30, 1988). The new date for the meeting is January 23, 1989, and the location will be Carver Hall, Room 165, North Carolina Agricultural and Technical (A&T) State University, 1601 East Market Street, Greensboro, NC 27411. The subcommittee will develop a proposal for a community forum on racial isolation and tracking in public schools in the State.

Persons desiring additional information, or planning a presentation to the Subcommittee, should contact Subcommittee Chairperson Dr. Richard Robbins or John I. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1989.

Melvin L. Jenkins,

Acting Staff Director

[FR Doc. 89–1159 Filed 1–17–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The information collection requirements are contained in an interim rule entitled "Taking and Importing of Marine Mammals." It was published in the **Federal Register** on January 6, 1989 and is found on pages 411–416. The data collections contained in the rulemaking are found at 50 CFR 216.24(d)(2)(vii)(C)(1)(5) and (viii). They will not become effective until OMB approval is received.

Agency: National Oceanic and Atmospheric Administration
Title: Marine Mammal Waivers for Sundown Sets and Experimental Fishing
Form Number: None
Type of Request: New Collection—Expedited Review Requested
Burden: 37 respondents; 58 reporting hours. Average hours per response is 1.58 hours
Needs and Uses: Vessel operators of purse seine vessels are being prohibited from continuing sets involving marine mammals more than 30 minutes after sunset unless the operator has obtained a waiver. If an operator is notified that his waiver will not be renewed, he can petition the Department to provide pertinent information on why the waiver should be continued. Tuna vessels may also request a waiver to certain regulations to permit the experimental use of equipment or procedures that may reduce marine mammal mortality. See **Federal Register** referenced above to review specific data requirements.
Affected Public: Businesses or other for-profit, small businesses or organizations
Frequency: On ocaasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. The specific data requirements as noted above can be found in the January 6, 1989 **Federal Register**.

Written comments and recommendations for the proposed information collection requirements should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1082 Filed 1–17–89; 8:45 am]

BILLING CODE 3510–22–M

Bureau of Export Administration

Kenneth K. Gimm et al.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants, and Charles Wilson Scientific (hereinafter collectively referred to as Gimm), 190 Route 73, Maple Shade, New Jersey 08052, pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988)) (the Act), and Part 788 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (the Regulations).[1]

The Department being prepared to allege that Gimm violated §§ 787.4 and 787.6 of the Regulations in that, on eight separate occasions between July 25, 1983 and November 3, 1987, Gimm exported U.S.-origin computers and other electronic components from the United States to South Korea without obtaining from the Department the validated export licenses which Gimm knew or had reason to know were required by § 772.1(b) of the Regulations;

The Department and Gimm having entered into a Consent Agreement whereby the parties have agreed to

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368–399 (1988).

settle this matter by Gimm's paying to the Department a civil penalty of $50,000 and by the Department's denying Gimm's export privileges for a two-year period, and;

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Gimm shall pay to the Department a civil penalty in the amount of $50,000, as follows: Gimm will make five equal annual installment payments to the Department of $5,000 each, for a total of $25,000. The first annual installment of $5,000 shall be paid on or before September 1, 1989. The four remaining installments shall be paid one, two, three and four years, respectively, from the date of the first payment. The remainder of the civil penalty, $25,000, shall be suspended, as authorized by § 788.16(c) of the Regulations, for a period of six years from the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants, and Charles Wilson Scientific (hereinafter collectively referred to as Gimm), 190 Route 73, Maple Shade, New Jersey 08052, shall be denied, for a period of two years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Gimm appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Gimm's privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Gimm is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Gimm or any related party, or whereby Gimm or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Gimm or any ralated party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 788.16(c) of the Regulations, the last 18 months of the denial period shall be suspended for a period of six years from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

Entered this 10th day of January, 1989.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

[FR Doc. 89–1101 Filed 1–17–89; 8:45 am]

BILLING CODE 3510-DT-M

Presidential Decision; Anti-Friction Bearing Section 232 National Security Import Investigation

AGENCY: Department of Commerce, Bureau of Export Administration, Export Administration, Office of Industrial Resource Administration.

ACTION: Announcement of Presidential Decision.

SUMMARY: The President has determined that no action is necessary to adjust imports of anti-friction bearings under authority of section 232 of the Trade Expansion Act of 1962, as amended. Included herein are the Executive Summary of the Department of Commerce's July 1988 section 232 report to the President, and the text of the Commerce/Defense November 1988 supplemental report to the President on the impact of other Administration initiatives on the industry's ability to meet national security requirements.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 377–4506.

SUPPLEMENTARY INFORMATION: On July 17, 1987, the Anti-Friction Bearing Manufacturers Association (AFBMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of ball and roller bearings on the national security. The DOC announced its initiation of an investigation, and solicited public comments in the **Federal Register** on August 4, 1987.

On July 15, 1988, Secretary Verity submitted his investigation report to the President. The investigation found that, at the present time, the domestic bearing industry would be able to meet most but not all national security requirements in the event of a major conventional war. The Secretary recommended that the

President defer making a finding pending a supplemental Commerce/Defense Department analysis of the impact of various ongoing Administration initiatives on the industry's ability to meet national security requirements. On August 5, 1988, the President accepted Secretary Verity's recommendation and directed Commerce and Defense to prepare the supplemental analysis.

On November 16, 1988, Secretary Verity submitted this supplemental analysis which concluded that improvements in economic conditions for the industry, in conjunction with the likely impact of other Administration initiatives, should be sufficient to bring the industry into an acceptable posture for national security purposes. Based on this analysis, the Secretary recommended that the President determine that imports of anti-friction bearings do not threaten to impair the national security.

On November 28, 1988, the White House announced that the President had determined that no action is necessary to adjust imports of anti-friction bearings under authority of section 232 of the Trade Expansion Act of 1962, as amended.

Both the Executive Summary of Commerce's July 15, 1988, section 232 report and the complete text of the November 16, 1988, supplemental Commerce/Defense report are reproduced below. A declassified version of the July 15 report will be available for public review and duplication in the Bureau of Export Administration's Office of Security and Management Support, Room 4886, U.S. Department of Commerce, Washington, DC 20230, (202) 377-2593.

Paul Freedenberg,

Under Secretary for Export Administration.

Executive Summary

Background

On July 17, 1987, the Anti-Friction Bearing Manufacturers Association (AFBMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of ball and roller bearings on the national security.

Under this statute, the President has authority to adjust imports based on recommendations from the Secretary of Commerce. DOC has one year in which to complete its investigation and forward its report to the President.

In its petition, the AFBMA asserted that "the domestic bearings industry is in a state of serious decline * * * (and unless action is taken) the domestic industry's ability to supply military and related commercial needs is seriously endangered."

The petitioner requested that quotas be established ranging from 0 percent to 34 percent of the U.S. market for the various bearing product categories. By statute, DOC must report findings and recommendations to the President by July 17, 1988.

The Significance of Bearings to Defense Manufacturing

Antifriction bearings are essential in any metal product with moving parts, and therefore are necessary for manufacturing defense products as mundane as motor vehicles and as sophisticated as high accuracy gyroscopes for missile guidance systems. Direct and indirect military consumption of bearings account for about one-fifth of U.S. apparent consumption. For example, the KC-10 refueling aircraft uses an estimated 6000 bearings; the C-17 transport plane uses about 10,000 bearings and the average helicopter uses about 2500 bearings in its transmissions, gear boxes and rotor linkages. Accordingly, the Department considers a viable domestic bearings industry as a key element of the defense manufacturing base.

Methodology for the Investigation

The methodology for this investigation is based on a two-step process.

Step I

Compare total available supply of each product with anticipated demand during a specified national security emergency—a one year mobilization period followed by one year of a major conventional conflict.

Supply is the sum of the following elements:

—Domestic mobilization capacity (developed from responses to our industry survey);

—Importer and domestic inventories (also from industry survey); and

—Reliable imports (embodied in the model of the 1984 NSC Stockpile Study).

Demand for each product is determined through an input/output analysis of end-use product requirements in the 1984 NSC Stockpile Study. (This approach was approved by the NSC, DOD and FEMA.)

Step II

In categories where a supply shortfall is found, determine whether imports have been a significant cause of the industry's inability to meet national security requirements.

In addition to this snapshot supply/demand review, the Department also analyzed current and prospective market trends to evaluate the industry's ability to meet national security requirements in the future.

Significant Industry Trends

Domestic shipments (in constant 1987 dollars) have declined from a high of $4.6 billion in 1979 to $3 billion in 1987.

Employment has declined from a high of 58,300 workers in 1979 to 43,000 workers in 1987.

Profitability (net before taxes) has declined from a high of 9.3 percent in 1980 to 3.8 percent in 1986 (last year for which data is available).

Since the late 1970s about 30 plants accounting for over $1 billion in production capacity have closed.

About half of the 31 domestic producers surveyed by DOC for this investigation depend on imported steel to varying degrees to manufacture finished bearings. Nine companies who import bearings quality steel do so because of a lack of domestic availability. Further, many domestic bearing manufacturers depend on imports of bearing components for their finished products. Therefore, the U.S. is more dependent on foreign sources to manufacture bearings than trade data indicate.

Import penetration varies significantly depending on the bearing category. In some product categories, U.S. manufacturers still control the domestic market. However, in other product lines foreign manufacturers dominate the market while import penetration is increasing and domestic shipments and production capabilities are declining.

DOD industry experts project that imports are likely to gain increased shares of the U.S. market—the large European and Japanese international bearing corporations have consolidated their hold on home markets, and have increasingly turned their attention to the United States.

Supply Shortfall Analysis

BEARINGS-SURPLUSES/SHORTFALLS AND 1987 IMPORT PENETRATION

[millions of 1982$]

	Mobilization year	Year 1	Import pen. (unit/value)
Regular Precision Bearings:			
Ball under 30mm	−72	−41	(78%/58%)
Ball 30-100mm	−175	−130	(61%/43%)
Ball over 100mm	−6	−43	(49%/25%)
Integral Shaft	−70	36	(33%/6%)
Thrust	16	41	(8%/4%)

BEARINGS-SURPLUSES/SHORTFALLS AND 1987 IMPORT PENETRATION—Continued

[millions of 1982$]

	Mobilization year	Year 1	Import pen. (unit/value)
Other Ball	110	60	(26%/10%)
Tapererd Roller	372	905	(38%/20%)
Spherical Roller	77	147	(75%/18%)
Cylindrical Roller	22	−23	(27%/21%)
Needle Roller	−21	−150	(7%/9%)
Other Roller	−33	−221	(49%/24%)
Superprecision Bearings:			
Ball under 30mm	7	18	(71%/33%)
Ball 30-100mm	64	38	(13%/11%)
Ball over 100mm	87	83	(6%/10%)
Cylindrical Roller	132	190	(36%/11%)

Projected supply can meet national security requirements in the following eight categories. Therefore, it was determined that imports do not threaten to impair the national security in these product lines at the present time.

—Thrust bearings
—Other ball bearings
—Tapered roller bearings
—Spherical roller bearings
—Superprecision ball bearings under 30mm
—Superprecision ball bearings 30–100mm
—Superprecision ball bearings over 100mm
—Superprecision cylindrical roller bearings

Supply shortfalls exist in seven of the fifteen categories under investigation:

—Integral shaft bearings
—Regular cylindrical roller bearings
—Needle roller bearings
—Other roller bearings
—Regular ball bearings under 30mm
—Regular ball bearings 30–100mm
—Regular ball bearings over 100mm

A further review of supply availability and market trends in these categories was conducted. In five of the seven categories, it was determined that imports do not threaten to impair the national security at the present time:

Integral shaft bearings: In 1987, imports accounted for about 33 percent of the units but only 6 percent of the value of U.S. consumption. It was therefore determined that imports are not a significant factor relating to the industry's inability to meet national security requirements.

Regular cylindrical roller bearings: The Department's survey of bearing manufacturers identified adequate surplus production capacity of superprecision cylindrical roller bearings to cover projected shortfalls in the regular precision category.

Needle roller bearings: In 1987, imports accounted for less than 10 percent of the units and value of U.S. consumption. It was therefore determined that imports do not have a significant impact on the industry's inability to meet national security requirements.

Other roller bearings: Imports accounted for about half of U.S. consumption in the 'catch all' basket for roller bearings that are not classified under one of the other categories. However, mounted roller bearings account for nearly 70 percent of this category and many of these are tapered roller and spherical bearings with cast or forged mountings attached. There is excess production capacity to manufacture tapered roller and spherical bearings that could be used to eliminate the projected shortfall in this category.

Regular ball bearings over 100mm: The Department's survey of bearing manufacturers identified adequate surplus production capacity of superprecision ball bearings over 100mm to cover the projected shortfall in the regular precision category.

The Department's analysis indicates that shortfalls which can be attributed to high levels of import penetration exist in two of the fifteen bearing categories under review.

Regular Precision Ball Bearings Under 30mm

A shortfall of $71 million (1982 dollars) is projected for the mobilization year and a $40 million shortfall during the war year. Surplus superprecision production capacity would reduce but not eliminate these shortfalls. This category accounted for 12 percent of the volume and 3 percent of the value of U.S. consumption in 1987.

In 1987, imports accounted for 58 percent of the value and 78 percent of the volume of domestic consumption. From 1982–87, U.S. shipments fell 22 percent by value and 17 percent by volume. During the same period, imports rose 41 percent by value and 79 percent by volume. Major import sources are Japan, Thailand and Singapore (imports from the latter two countries entirely reflect activity by Japan's Minebea). From 1984–87, half of the U.S. firms producing these bearings discontinued production leaving five remaining companies (three of which are foreign-owned).

Regular Precision Bearings 30–100mm

A shortfall of $174 million is projected for the mobilization year followed by a shortfall of $129 million in the war year. Surplus superprecision production capacity would reduce but not eliminate these shortfalls. This category accounted for 13 percent of the volume and 9 percent of the value of U.S. consumption in 1987.

In 1987, imports accounted for 43 percent of the value and 61 percent of the volume of domestic consumption. From 1982–87, U.S. shipments fell 8 percent by value and rose 1 percent by volume. During this period, imports rose 38 percent by value and 50 percent by volume. Major import sources are Japan, Canada, Italy and West Germany. Defense uses are pervasive and range from ground transportation to ordnance equipment.

Key USG Actions Affecting Bearings

Before reaching a decision regarding a national security threat posed by imports, it is important to consider what steps the Government has and is taking to address the industry's problems.

DOD currently has in place a Federal Acquisition Regulation (FAR) requiring domestic procurement of ball bearings under 30mm used in military products. DOD has published draft regulations to expand the existing FAR to cover all bearings used military products. DOD is also undertaking a number of other initiatives to help improve the industry's production base and ability to meet national security requirements.

Findings

The Department's investigation finds that, at the present time, the domestic bearings industry would be able to meet most but not all national security requirements in the event of a major conventional war. Further, imports continue to pose significant challenges to domestic manufacturers in a number of product lines which could lead to the further erosion of domestic production capabilities. The Administration is currently taking a number of steps to improve the bearing industry's production capabilities including the DOD draft Federal Acquisition Regulation (FAR) that will require domestic procurement of all defense related bearings.

Recommendations

The Secretary of Commerce recommends that the President defer making a finding in this investigation or taking any action under section 232 until the effect of these initiatives on the bearing industry's ability to meet national security requirements has been evaluated by the Departments of Commerce and Defense.

The President,
The White House, Washington, DC 20520.

Dear Mr. President: On July 15, 1988, I forwarded to you the Department of

Commerce's study on the Effect of Anti-friction Bearing Imports on the National Security conducted under Section 232 of the Trade Expansion Act of 1962, as amended. Our investigation determined that the domestic bearing industry would be able to meet most but not all national security requirements in the event of a major conventional war. Further, we concluded that imports continued to pose significant challenges to domestic manufacturers in a number of product lines which could lead to the further erosion of domestic production capabilities.

Notwithstanding these concerns, I recommend that you defer a final decision in this case because the Administration is currently undertaking a number of initiatives designed to improve the bearing industry's ability to meet national security requirements.

Specifically, the Department of Defense (DOD) has developed a Bearings Action Plan that requires domestic procurement of certain defense-related bearings (via a DOD Federal Acquisition Regulation Supplement) and includes a number of other actions designed to improve the bearing industry's competitiveness and ability to meet defense requirements.

After considering our report and recommendations, you decided to defer a final decision in the Section 232 investigation pending receipt of a Department of Commerce/DOD evaluation of the effects of the Administration's efforts in support of the bearing industry. The main points of my analysis are as follows:

- In the event of a global conventional war, the domestic industry would be able to meet most national security requirements. Domestic bearing manufacturers would be unable to meet national security needs only in two regular precision product lines.
- Even in the event of such a major military conflict, the domestic industry would be able to meet all superprecision bearing requirements, which are the most critical elements for the production of advanced weapon systems.
- The DOD Federal Acquisition Regulation Supplement should provide the domestic industry with an assured market for defense related products. Furthermore, the other elements in the Bearings Action Plan (for example, the planned research center for bearing manufacturing technology, and the bearing refurbishment program to transfer refurbishment work from DOD facilities to domestic bearing companies) should provide the U.S. bearing industry with additional market opportunities.
- Finally, since our initial Section 232 analysis, the U.S. industry has benefitted from an increase in demand for bearings and is now operating at very high capacity utilization rates. Further, there has been an increase in new and expanded plant investment by domestic- and foreign-owned companies in the United States, which should result in an increase in U.S. capability to produce bearings.

Although the issue of antidumping/countervailing duty investigations cannot be regarded as a factor for consideration in the Section 232 investigation, it is useful to discuss the investigations in light of current bearing industry issues.

On October 28, 1988, the Department of Commerce issued its preliminary antidumping investigation's determinations on bearing imports from nine countries, with dumping margins generally in the range of 20–80 percent. The final antidumping determinations will be issued no earlier than January 1989.

I have enclosed a short paper which describes the industry's status, Administration programs and preliminary antidumping determinations in more detail. I have also enclosed a letter from the DOD outlining the status of Bearings Action Plan programs. Based on our analysis, I recommend that you determine that imports of antifriction bearings do not threaten to impair the national security.

Sincerely,

Bill Verity,

Secretary of Commerce.

FACTORS FOR CONSIDERATION—BEARINGS SECTION 232 SUPPLEMENTARY PAPER

Industry Status

The current demand for bearings in the United States is at its highest point in many years as major bearing-consuming industries, such as automobiles, aerospace and off-road equipment are experiencing significant sales increases.

The U.S. bearing industry has benefitted from the substantial increase in domestic demand and has been operating at close to 100 percent of its capacity for the last six months in almost every bearing category examined under the Section 232 investigation. In fact, for some bearing categories, the U.S. industry has been operating at full capacity for over a year.

As a result of the high capacity utilization rates, lead times for new orders are longer than last year in nearly every category. This has contributed to price increases, which reportedly have reached as much as 30 percent in some categories. Moreover, further price increases can be expected as the pressure on plant capacity continues.

These indicators of the health of the U.S. bearings industry all point to a general upturn in business opportunities. It is likely that these opportunities will result in a more competitive U.S. bearings industry, which will enhance its capability to produce bearings to meet national security requirements in an emergency.

Investment

The United States has recently attracted significant investment in the bearing industry. The underlying reasons for this new investment leave us optimistic about the industry's future competitiveness. Not only have some production costs (labor and material) in the United States fallen below our European and Japanese competitors, but major bearing consuming-industries appear to be making a comeback, after years of poor performance. Large cost savings and improved quality in bearing production can now be achieved by investing in the latest process technologies.

Currently, more investment is taking place in the U.S. bearing sector than in any other world bearing sector. Much of this investment has come from several of the large foreign bearing multinationals. Several of these firms have announced that they intend to invest large sums of money for expansion of existing U.S. facilities and for the construction of new plants.

Some examples of this investment include the following: Koyo Seiko of Japan has allocated $60–70 million for the next three years to expand its South Carolina plant to produce tapered roller bearings and to increase ball bearing capacity. NSK of Japan plans to spend $50 million to expand its Michigan and Iowa ball bearing facilities over the next two years. SKF of Sweden has announced a $35 million expansion of its Georgia plant to produce standard ball bearings, and is spending additional millions upgrading its bearing plants in Pennsylvania, Kentucky and New York. FAG of Germany is dramatically expanding its Missouri factory, and NTN of Japan has nearly completed the expansion of one of its Illinois plants. Further, two new foreign entries to the American market, Georg Muller of Germany, and Nachi-Fujikoshi of Japan, have each announced new ball bearing plant constructions in Illinois and Michigan.

Many domestic firms are also investing heavily and some companies are increasing their investment plans. MPB, one of the country's finest producers of superprecision bearings, has announced a five-year $40 million investment plan. Timken is expanding its North Carolina tapered roller bearings facility and is planning other expansions. Federal-Mongul is nearing completion of its new $65 million ball bearing plant in Pennsylvania.

The new investment and plant expansion examples mentioned above are a healthy indication of the improving strength of the U.S. market for bearings. Such an expansion of capacity in the United States to produce bearings should clearly boost our domestic

capability to produce bearings for national security needs during a mobilization.

Bearings Action Plan Programs

The Federal DOD Aquisition Regulation Supplement (DFARS) on all Defense Department procurements of antifriction bearings was established in August 1988 for a three to five year period. The DFARS could provide an estimated $40–50 million in additional revenue opportunities to domestic suppliers of defense-related bearings. It should also reverse the increase in defense-related bearings imports which would otherwise have occurred. The DFARS covers all ball bearings 30mm and above and all roller bearings. This new DFARS complements the 1971 DFARS on miniature and instrument bearings (30mm and below).

In addition to the DFARS, the Bearings Action Plan contains other programs which should have an impact on the competitiveness of the U.S. bearings industry. For example, the Department of Defense has a project underway to establish a Research Center on Bearings Manufacturing Process Technology. The Center will be operated by a coalition of universities and private organizations, with significant DOD funding requested. The objective of the center will be to focus on production technology for ball and roller bearings, with a goal of decreased reliance on foreign sources for defense-related bearings.

The Defense Department is also involved in transferring some of the bearing refurbishment work it now performs in-house to private industry, especially where the refurbishment involves complicated processing. This should provide industry with additional defense-related business to maintain and expand capacity.

The Defense Industrial Supply Center recently held a special conference in Philadelphia on aircraft engine bearings, which brought together customers and suppliers to discuss mutual concerns. The approach was beneficial for both parties, and DOD intends to continue this dialogue in future conferences with the bearings industry.

The last area of interest with DOD programs is the enhanced effort to identify and prosecute manufacturers or suppliers involved in potential fraudulent activities with the Defense Department. Currently, the Defense Criminal Investigative Service is investigating alleged wrongdoing by two suppliers of bearings. Through this kind of effort, the sales of legitimate bearing suppliers will be enhanced if the accused parties are found guilty and debarred from further DOD procurement.

The DOD bearings initiatives should help U.S. bearing producers to boost their competitive position with respect to the defense-related bearings business. Clearly, these programs are focused on the defense-critical area of bearings production, which has been the focus of our 232 investigation. We anticipate an overall increase in U.S. capabilities in this area.

Antidumping/Countervailing Duty Investigations

Although this issue cannot be regarded as a factor for consideration in the section 232 investigation, it is useful to discuss the antidumping/countervailing duty investigations in light of current bearing industry issues.

On August 30, 1988, the Commerce Department issued its preliminary determinations of subsidies in the countervailing duty investigations on bearing imports from Thailand and Singapore. The preliminary net subsidy rates were 17.83 percent for Thailand and 4.95 percent for Singapore.

On October 28, 1988, Commerce issued its preliminary determinations that imports of antifriction bearings from West Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom are being sold in the United States at less than fair value. The estimated dumping margins range from .48 percent to 225.88 percent, with most of the margins falling in the 20 percent to 80 percent range.

The Department will make its final antidumping and countervailing duty determinations no earlier than January 10, 1989. To the extent that it finds that bearings are not being fairly-traded in the United States and the International Trade Commission finds that bearings imports are causing injury to the domestic industry, the Department will impose antidumping/countervailing duties based upon the final dumping margins/net subsidy rates.

Conclusion

Since our initial section 232 analysis was completed, the U.S. industry has benefitted from an increase in demand for bearings and is now operating at very high capacity utilization rates. Further, there has been an increase in new and expanded plant investment by U.S. and foreign companies, resulting in an increase in U.S. capability to produce bearings.

The recent implementation of a DFARS on bearings should provide the domestic industry with an assured market for defense-related products. Furthermore, the other elements in the DOD Bearings Action Plan should help the U.S. bearing industry improve its competitiveness.

We therefore conclude that the competitiveness of the U.S. bearing industry has improved since the DOC's July 1988 report. We further conclude that the trends and programs cited above should lead to further improvements in the industry's competitiveness and in its ability to meet national security requirements.

Mr. John A. Richards,
Deputy Assistant Secretary for Industrial Resources Administration, Department of Commerce, Bureau of Export Administration, Washington, DC 20230.

October 28, 1988.

Dear John, Per your letter of October 7 we have attempted to evaluate our initiatives to assist the domestic bearing industry. As you know, none of our initiatives have been in place sufficient time to make definite statements as to their impact on the industry. Based on the large volume of correspondence we have received in the past few weeks from bearing users expressing concern over price increases and nonavailability of bearings, it appears as if our efforts are bringing about increased sales of domestic bearings.

The Department received almost 30 public comments responding to the publication of our interim procurement restriction. We will reconcile those comments and hopefully publish a final rule within 60 days. The comments were generally confined to further fine-tuning the restriction with expected expressions of concern from foreign manufacturers and governments. Directing an increased portion of the $500 to $600 million annual defense bearing procurement to domestic sources will improve their profitability, which they will hopefully use to make themselves more competitive.

We are actively working with the Anti-Friction Bearing Manufacturers Association to ascertain the manufacturing and product technology needs of the industry. The Defense Logistics Agency has a study contract underway that will yield definitive information on these issues in the coming months. We are also pursuing an independent assessment of the industry's needs through a parallel and informal process and will develop a firm course of action by early 1989. Throughout the course of these efforts, the Services will continue to pursue specific Manufacturing Technology and Industrial Modernization Incentives Programs as required to assist the industry.

The Defense Industrial Supply Center held a special conference this spring in Philadelphia on aircraft engine bearings, which brought together the customers and suppliers to discuss mutual problems. We believe this approach is beneficial, and we will continue our efforts to promote constructive dialogue between the customer and supplier in the future with similar conferences.

The last area of interest is the effort to identify and prosecute manufacturers or suppliers involved in potential fraudulent

activities. Currently, the Defense Criminal Investigative Service of the DoDIG is investigating alleged wrong doing by two suppliers of bearings. Through this kind of effort the sales of legitimate bearing suppliers will be enhanced if the accused parties are found guilty and debarred from further DoD procurement.

In reviewing the specific bearing shorfalls identified in your investigation of the Section 232 petition, we believe that the actions of our Bearing Action Plan should be adequate to bring the domestic industrial base into an acceptable posture for national security purposes. Our respective Departments must continue to be vigilant, however, for foreign business practices that may violate United States laws on DoD procurement regulations and take appropriate actions where necessary.

We look forward to working with your office in the future as we monitor the progress of this vital defense industry.

Sincerely,

Robert C. McCormack,

Deputy Under Secretary (Industrial and International Programs).

[FR Doc. 89-1127 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification of Permit; San Antonio Zoological Gardens and Aquarium (P350); Modification No. 1 to Permit No. 497

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 497 issued to the San Antonio Zoological Gardens and Aquarium, 3903 North St. Mary's Street, San Antonio, Texas 78212, on April 16, 1985 (50 FR 18283) is modified in the following manner:

Section B.4 is replaced by:

4. This Permit is valid with respect to the taking authorized herein until December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on December 31, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: January 10, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-1145 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#31)

On August 5, 1988, notice was published in the **Federal Register** (53 FR 28902) that an application had been filed by Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, to conduct scientific research on Hawaiian monk seals (*Monachus schauinslandi*).

Notice is hereby given that on January 12, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. The proposed research is consistent with the purposes and policies of the Marine Mammal Protection Act. The applicant has demonstrated that a non-lethal method of carrying out the research is not feasible in those instances where lethal take may occur. The Service is satisfied that dying seals will be sacrificed only if sufficiently fresh seals are unavailable for autopsy; and that healthy seals will be sacrificed only if the veterinary pathologist determines that thorough examinations of these control seals are critical to making a diagnosis. We are satisfied that the results of this research will directly benefit the Hawaiian monk seal and that such research fulfills a critically important research need.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 8268, Silver Spring, Maryland; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: January 12, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-1146 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Codon

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Codon, having a place of business in South San Francisco, CA 94080, an exclusive license in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-148,749, "Vaccines for the Protection of Animals Against Hypodermosis." Codon is the joint owner of this invention. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Codon.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-1113 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Salsbury Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of

Commerce, intends to grant to Salsbury Laboratories, Inc, having a place of business in Charles City, IA 50616, an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7–128,386, "Avian Herpesvirus Amplicon as a Eucaryotic Expression Vector". Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–1114 Filed 1–17–89; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Systems Management College Board of Visitors Meeting

AGENCY: Defense Systems Management College, DOD.

ACTION: Board of visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 226, Fort Belvoir, Virginia, on Tuesday, January 31, 1989, from 0830 until 1530. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere on (703) 664–4235.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 12, 1989.

[FR Doc. 89–1174 Filed 1–17–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Development of the Armed Forces Recreation Center-Fort DeRussy, Fort DeRussy, Oahu, HI

AGENCY: U.S. Army Corps of Engineers, DOD, Honolulu Engineer District.

For: U.S. Army Western Command/U.S. Army Support Command, Hawaii and the U.S. Army Community and Family Support Center.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement.

SUMMARY: .

1. The U.S. Army Western Command (WESTCOM)/U.S. Army Support Command, Hawaii (USASCH) and U.S. Army Community and Family Support Center (CFSC) are in the conceptual stage of planning the development of the Armed Forces Recreation Center at Fort DeRussy, Waikiki, Hawaii. The development as funded, would occur in several phases over about seven years. Nearly all structures now used by the U.S. Army Reserve would be razed on an incremental basis, except for Maluhia Hall in the northern corner of Fort DeRussy. In place of these facilities, Kalia Road would be rerouted and widened; two multi-level parking structures consisting of one parking structure in the vicinity of the existing Post Office and Saratoga Road and one DOD parking facility with dedicated hotel parking would be constructed; a new 400-room hotel tower similar in appearance and in the vicinity of the existing Hale Koa Hotel would be built; new arrival/entrance areas for the Hale Koa Hotal complex and Hawaii Army Museum (Battery Randolph) would be constructed; and amenities such as landscaping, outdoor recreational and entertainment facilities (tennis courts, putting courses, open fields, jogging paths, multipurpose pavilions, etc.) would be provided. The relocation of the U.S. Army Reserve activities to designated sites elsewhere and the construction of new facilities for them will be addressed in this Environmental Assessment. In a future increment, Maluhia Hall will be renovated for post support activities. Open space will be expanded with a generally landscaped central land to sea corridor.

2. Alternatives to be considered include no action, various alignments of Kalia Road, alternate sitings of recreation/entertainment facilities, various designs and configurations of the proposed hotel, and phased relocation of the U.S. Army Reserve activities (only if existing buildings are used or affect any new construction sites).

3. Potentially significant environmental concerns include possible impact on archaeological/historic resources; alteration of existing vehicluar traffic patterns associated with the realignment of Kalia Road; potential increase in vehicular air emissions associated with traffic flow, and parking structures; a shift from a predominantly military character (U.S. Army Reserve) to a recreation/hotel character; effect on new view planes; increase in defacto visitor population; economic stimulation from construction and visitor expenditures; and perceived public concerns on the alternative uses of Fort DeRussy.

4. Public involvement and project scoping will consist of processing a notice of the project through the Areawide Clearinghouse; advertising the Notice of Intent in the State of Hawaii Office of Environmental Quality Control Bulletin, and through contacting local Neighborhood Boards and other community groups, affected government agencies, private organizations, and individuals. Public workshops to scope the EIS will be held but are not yet scheduled. Public meeting will be held after distribution of the DEIS. All interested government agencies, planning advisory committees, and private organizations and individuals are encouraged to provide input into the study process, identifying potential environmental and social concerns and effects, and developing measures to avoid, ameliorate, or mitigate adverse environmental social impacts.

5. Coordination will be undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies, State of Hawaii agencies such as the Department of Health, Department of Land and Natural Resources, Department of Business and Economic Development, Department of Transportation, Office of State Planning, and Office of Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supply, Police Department, Fire Department,

Department of Housing and Community Development, Department of Land Utilization, Department of General Planning, Department of Parks and Recreation, Department of Public Works, and Department of Transportation Services; and organizations such as the Hawaii Visitors Bureau and the Waikiki Neighborhood Board.

6. The Draft EIS is currently scheduled to be available for public review in January 1990. Questions about the proposed action and the DEIS can be addressed to: David G. Sox, U.S. Army Engineer District, Honolulu, Military Branch, Installation Support Section, Building 230, Fort Shafter, Hawaii 96858–5440, Telephone: (808) 438–5030/1489.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

January 11, 1989.

[FR Doc. 89–1074 Filed 1–17–89; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 25, 1989 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Pennsylvania Fish Commission D–80–32 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 12.1 million gallons (mg)/30 days of water to the applicant's Pleasant Mount Fish Cultural Station from Well Nos. 2 and 3. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 20.7 mg/30 days. The project is located in Mount Pleasant Township, Wayne County, Pennsylvania.

2. *Occidental Chemical Corporation D–84–46 (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 91.6 mg/30 days of water to the applicant's industrial facility from Well Nos. 7, 8 and 9. Commission approval on January 30, 1985 was limited to four years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 114 mg/30 days. The project is located in Burlington Township, Burlington County, New Jersey.

3. *Department of the Army—Tobyhanna Army Depot D–87–57 CP.* An application for approval of a ground water withdrawal project to supply up to 4.75 and 3.11 mg/30 days of water to the applicant's distribution system from new Well No. 6 and existing Well No. 1, respectively, and to limit the withdrawal from all wells to 20.0 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

4. *Walnut Bank Water Company D–88–69 CP.* An application for approval of a ground water withdrawal project to supply up to 5.16 mg/30 days of water from new Well No. 2. The project is in Richland Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 2 is located 3600 feet southeast of the intersection of East Pumping Station and Heller Roads.

5. *ICI Americas, Inc. D–88–74.* An application for approval of a ground water withdrawal project to supply up to 43.452 mg/30 days of water to the applicant's industrial facility from existing Well Nos. 8, 9, 10 and 11, and to limit the withdrawal from all wells to 60.04 mg/30 days. The project is located in New Castle County, Delaware.

6. *Atlas Powder Company D–88–83.* An application to modify an industrial wastewater treatment plant that serves the Reynolds facility of the Atlas Powder Company, located in Walker Township, Schuylkill County, Pennsylvania. The applicant proposes to construct additional treatment units and reroute wastewater flows in order to improve effluent quality and bring the discharge into compliance with NPDES permit limitations. The applicant will continue to discharge treated sewage and industrial process wastewater to the Little Schuylkill River, but outfall 002 to Brushy Run will be eliminated. A combined design average flow of 0.2 million gallons per day will be discharged from existing outfalls 008 and 011 to the Little Schuylkill River adjacent to the Reynolds Plant.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

January 10, 1989.

[FR Doc. 89–1160 Filed 1–17–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.190]

Invitation of Applications for New Awards Under the Christa McAuliffe Fellowship Program for Fiscal Year 1989

Purpose: To provide fellowships to outstanding teachers to enable and encourage them to continue their education or to develop educational projects and programs.

Deadline for Transmittal of Recommendations: March 10, 1989.

Available Funds: $1,892,000.

Estimated Range of Awards: $14,787 to $29,573.

Estimated Number of Awards: 100.

Project Period: Up to 12 months.

Applicable Regulations: The Christa McAuliffe Fellowship Program regulations, 34 CFR Part 237, as proposed to be amended (53 FR 46072–46073).

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on Tuesday, November 15, 1988 because of the need to make awards before the academic school year ends. Fellows must have time to make arrangements with their school systems for sabbaticals to cover their grant period during the 1989–90 school year. Further, the Secretary has not received any comments on the NPRM and does not anticipate making any changes in the final regulations. However, if any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

For applications, call or write the State Contact Person:

Alabama

Mr. Bill Ward, 111 Coliseum Boulevard, Montgomery, Alabama 36193, (205) 261–2749

Alaska

Ms. Terri Campbell, Alaska Department of Education, P.O. Box F, Juneau, Alaska 99811–0500, (907) 465–2884

American Samoa

Mr. Ralph Farrow, Department of Education, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633–5237

Arizona

Mr. Bill Hunter, Arizona Department of Education, 1535 West Jefferson Street, Phoenix, Arizona 85007, (602) 255–2147

Arkansas

Ms. Brenda Matthews, Arkansas Department of Education, #4 Capitol Mall, Little Rock, Arkansas 72201, (501) 682–4251

California

Mr. Peter Blackshaw, Governor's Office, State Capitol, Sacramento, California 95814, (916) 323–0611

Colorado

Dr. Ray E. Kilmer, Colorado Department of Education, 201 East Colfax Avenue, Denver, Colorado 80203, (303) 866–6806

Connecticut

Mr. Thomas Lovia Brown, Connecticut State Department of Education, 165 Capitol Avenue, Hartford, Connecticut 06106, (203) 566–4122

Delaware

Dr. Bill Barkley, Department of Public Instruction, Townsend Building, Dover, Delaware 19903, (302) 736–2770

District of Columbia

Ms. Jean Green, Office of Postsecondary Education, Research and Assistance, 1331 H Street, NW., Suite 600, Washington, DC 20005, (202) 727–3685

Florida

Ms. Sherry Thomas or Ms. Mary Lou Carothers, Florida State Department of Education, G20–Collins, Tallahassee, Florida 32099, (904) 488–6503

Georgia

Ms. Gale Samuels, Georgia Department of Education, Twin Towers East, Atlanta, Georgia 30334, (404) 656–2476

Guam

Ms. Lillian Wyatt, Administrator of Federal Programs, P.O. Box DE, Agana, Guam 96910, (671) 472–8524

Hawaii

Ms. Mary Tanouye, Hawaii Department of Education, P.O. Box 2360, Room 301, Honolulu, Hawaii 96864, (808) 548–5215

Idaho

Mr. Gene Peterson, Executive Office of the Governor, State House, Boise, Idaho 83720, (208) 334–3309

Illinois

Ms. Gail Lieberman, State Capitol, Room 2½, Springfield, Illinois 62706, (217) 782–4921

Indiana

Ms. Betty Johnson, Indiana Department of Education, 251 E. Ohio, Indianapolis, Indiana 46204, (317) 232–9141

Iowa

Dr. Joseph Wolvek, Iowa Department of Education, Grimes State Building, Des Moines, Iowa 50319, (515) 281–3294

Kansas

Mr. Warren Bell, Kansas State Department of Education, 120 East 10th Street, Topeka, Kansas 66612, (913) 296–2306

Kentucky

Ms. Sandy Gubser, Office of the Governor, State Capitol Building, Room 105, Frankfort, Kentucky 40601, (502) 564–2611

Louisiana

Dr. James Barr, Department of Education, P.O. Box 94064, Baton Rouge, Louisiana 70804–9064, (504) 342–1136

Maine

Ms. Polly Ward, Maine Department of Education, State House Station 23, Augusta, Maine 04333, (207) 289–5113

Maryland

Dr. Douglas S. MacDonald, Maryland State Scholarship Administration, 2100 Guilford Avenue, Baltimore, Maryland 21218, (301) 333–6420

Massachusetts

Ms. Mary Lou Anderson, State Department of Education, 1385 Hancock Street, Quincy, Massachusetts 02169, (617) 770–7596

Michigan

Ms. Debra Clemmons, Michigan Department of Education, P.O. Box 30008, Lansing, Michigan 48909, (517) 373–3608

Minnesota

Dr. Susan K. Vaughan, Minnesota Department of Education, 645 Capitol Square Building, St. Paul, Minnesota 55101, (612) 296–4075

Mississippi

Mr. Jack Lynch, Mississippi Department of Education, P.O. Box 771, Jackson, Mississippi 39205, (601) 359–3519

Missouri

Ms. Georganna Beachboard, Missouri Department of Education, P.O. Box 480, Jefferson City, Missouri 65102, (314) 751–2661

Montana

Mr. J. Michael Pichette, Governor's Office, State Capitol, Helena, Montana 59620, (406) 444–3111

Nebraska

Mr. Jim Woodland, Policy Research Office, Box 94601, Lincoln, Nebraska 68509, (402) 471–4329

Nevada

Ms. Mary Peterson, Nevada Department of Education, 400 West King Street, Carson City, Nevada 89710, (702) 885–3136

New Hampshire

Mr. Charles Marston, Office of the Governor, State House, Concord, New Hampshire 03301, (603) 271–3145

New Jersey

Mr. Anthony Villane, New Jersey Department of Education, CN 500, Trenton, New Jersey 08625, (609) 984–8281

New Mexico

Mr. Charles B. Stockton, Governor's Office, State Capitol, Santa Fe, New Mexico 87503, (505) 437–4010

New York

Dr. Charles Mackey, State Education Department, Albany, New York 12230, (518) 474–6440

North Carolina

Ms. Grace Drain, North Carolina Department of Public Instruction, 116 West Edenton Street, Raleigh, North Carolina 27603, (919) 733–4736

North Dakota

Ms. Pat Laubach, Department of Public Instruction, State Capitol, Bismarck, North Dakota 58505, (701) 224–4525

Northern Marianas

Mr. Robert Coldeen, Department of Education, Saipan, CM 96950, (670) 322–3194

Ohio

Ms. Donna Boylan, Ohio Department of Education, 65 S. Front Street, Columbus, Ohio 43266, (614) 466–2407

Oklahoma

Ms. Sharon A. Lease, State Department of Education, 2500 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, (405) 521–4311

Oregon

Mr. Jim Sanner, Oregon Department of Education, 700 Pringle Parkway, SE., Salem, Oregon 97310, (503) 378–6405

Palau

Mr. Masaaki Emesiochl, Palau Department of Education, P.O. Box 189, Koror, Palau 96940, Intl. Op. 160+680 Palau #570

Pennsylvania

Mr. Ron Hall, Pennsylvania Department of Education, 333 Market Street, Harrisburg, Pennsylvania 17126, (717) 783–2862

Puerto Rico

Ms. Carmen Morales, G.P.O. Box 759, Lieutenant Cesar Gonzalez & Calas Street, Hato Rey, Puerto Rico 00919, (809) 756–5820

Rhode Island

Ms. Lorraine Webber, Rhode Island Department of Education, 22 Hayes Street, Providence, Rhode Island 02908, (401) 277–2030

South Carolina

Ms. Betty Davidson, Governor's Office, P.O. Box 11369, Columbia, South Carolina 29211, (803) 734-0448

South Dakota

Ms. Roxie Thielen, South Dakota Department of Education, 700 Governor's Drive, Pierre, South Dakota 57501, (605) 773–3134

Tennessee

Mr. John Gaines or Mr. James Swain, Tennessee Department of Education, Cordell Hull Building, Room C1–103, Nashville, Tennessee 37219, (615) 741–0874

Texas

Dr. Marianne Vaughan, Texas Education Agency, 1701 N. Congress, Austin, Texas 78701, (512) 463–9327

Utah

Mr. Scott Cameron, Utah State Office of Education, 250 East Fifth South, Salt Lake City, Utah 84111, (801) 533–4095

Vermont

Mr. George Tanner, Chief, Curriculum and Instruction Unit, Department of Education, Montpelier, Vermont 05602, (802) 828–3111

Virgin Islands

Dr. Rosemarie Larreur, Department of Education, P.O. Box 6640, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–4679

Virginia

Ms. Diane Jay, Virginia Department of Education, P.O. Box 6Q, Richmond, Virginia 23216, (804) 225–2013

Washington

Mr. Ronn Robinson or Ms. Pauline Carlton, Office of the Governor, 320 Insurance Building, Mail Stop AQ–44, Olympia, Washington 98504, (206) 753–5460

West Virginia

Mr. Tony Smedley, 1900 E. Washington Street, Capitol Complex—Building 6, Room B337, Charleston, West Virginia 25305, (304) 348–2703

Wisconsin

Ms. Harlene Ames, Department of Public Instruction, P.O. Box 7841, Madison, Wisconsin 53707, (608) 266–9849

Wyoming

Dr. Audrey M. Cotherman, State Department of Education, Hathaway Building, Cheyenne, Wyoming 82002, (307) 777–6202

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Acting Division Director, Division of Discretionary Grants, Office of Elementary and Secondary Education, 400 Maryland Avenue W., Washington, DC 20202, Telephone (202) 732–4059.

Program Authority: 20 U.S.C. 1113–1113e.

Dated: January 10, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–1129 Filed 1–17–89, 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.162]

Invitation of Applications for New Awards Under the Emergency Immigrant Education Program for Fiscal Year 1989

Purpose: This program provides financial assistance to State educational agencies (SEAs) for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools.

Deadline for Transmittal of Applications: April 21, 1989.

Deadline for Intergovernmental Review Comments: June 20, 1989.

Applications Available: Application packages may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Available Funds: $29,640,000.

Project Period: 12 Months.

Programmatic Information: An SEA may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2. To be eligible for a grant, an SEA must submit a count of eligible immigrant children conducted during the month of March, 1989.

Applicable Regulations: (a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581, and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, and 85.

For Applications or Information: For further information contact Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–5708.

Program Authority: 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: January 11, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89–1126 Filed 1–17–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Broad Agency Research Announcement, 1989; Coal Research and Technology Development

I. Introduction

The Morgantown Energy Technology Center (METC), Department of Energy (DOE), invites any university or other institution of higher education, not-for-profit or for-profit organization, non-Federal agency, or other 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 3 years and may exceed 5 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 amended by Pub. L. 98–369; the Competition in Contracting Act of 1984; the Federal Acquisition 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 Broad Agency Announcement (BAA) must be submitted to: Acquisition and Assistance Division, U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road (Mail Stop I07), Morgantown, West Virginia, 26505. Proposals may be submitted to DOE at any time after public release of this BAA, but in all cases must be received by DOE within 12 months after the date of publication in the **Federal Register**.

IV. Information to be Provided in Proposals

A. Each Proposal Should Include the Following Information

1. A face page that contains basic information on the organization, principal investigator, and the proposed project. The face page should also reference this Announcement.

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 research facilities and experience of the proposer, and the proposed cost-sharing arrangement, 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 (Standard Form 1411 and appropriate attachments should be used).

5. A description of the proposer's management capability (including cost management techniques) and experience, 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 for 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 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. METC 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.

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 proposed research;

2. The appropriateness of the proposed method or approach;

3. Competency of proposed research personnel and adequacy of proposed research facilities/resources;

4. Adequacy and relevance of the proposer's management capability and experience as it relates to the proposed research; and

5. 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 results of the evaluations performed in accordance with A and B above. 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.

Appendix A

The Morgantown Energy Technology Center (METC) program has established two complementary overall goals supporting increased utilization of domestic fossil fuel resources. These program goals are: (1) Increase the contribution of coal by improving environmental, technical, and economic performance and by increasing the areas of application and flexibility of coal-based systems; and (2) increase the effective resource base for premium gas and liquid fuels through enhanced resource recovery and/or production of liquid and gaseous fuel analogs from coal, shale, and tar sands. The METC program intends to pursue research opportunities in the utilization and extraction of domestic fossil fuel resources that are of high-risk and long-term characteristics. The METC program incorporates basic and applied research that is coupled to advance research

activities needed to improve the understanding of scientific fundamentals and engineering process applications. These activities include cross-cutting research on physical, chemical, and thermodynamic characteristics of fossil fuels and their derivation, fluid phenomena, material transport, mathematical modeling, and environmental sciences. The major program areas are identified below.

1. Coal Research and Technology Development

This program supports basic and applied research efforts in a variety of technologies to enhance the efficient and environmentally compatible utilization of coal. The major technologies and their objectives are as follows:

(i) Advanced Control Technology

The goal of this technology area is primarily directed toward the development of advanced processes that reduce the release of coal-derived contaminants. Research activities include gas stream cleanup, and waste management. Gas stream cleanup activities address the removal of fuel gas contaminants, alkali and trace chemicals from gasifier and combustion process streams for hardware protection prior to utilization in advanced power conversion systems such as gas turbines and fuel cells, and to meet environmental emission requirements. Waste management efforts focus primarily on waste sampling and characterization from emerging technologies.

(ii) Technology Component and Instrumentation Development

The goal of this technology area is to provide process durable components and on-line control and monitoring instrumentation for existing and advanced processes. The program includes generic studies of components and investigation of instrumentation control and diagnostic concepts in environments associated with advanced fossil fuel technologies.

(iii) Combustion Systems

The overall goal of this technology area is to provide new combustion technology for coal-based fuels to reduce environmental emissions and to extend coal-based systems to industrial, commercial, and residential applications. Research activities include atmospheric and pressurized fluidized-bed combustion concepts. Atmospheric fluidized-bed combustion activities are directed at supporting development of second-generation systems suitable for small industrial, commercial, and residential application. Pressurized fluidized-bed combustion activities are directed at supporting development of utility systems.

(iv) Fuel Cells

The overall goal of this technology area is to support high-risk technology base development leading to efficient, economic, and environmentally acceptable use of conventional and alternative hydrocarbon fuels. The program is focused on developing basic and applied data on advanced concepts, such as the solid oxide or solid polymer, that have technical and economic advantages compared to existing systems, and potential applications using coal-derived fuels.

(v) Heat Engines (Turbines, Diesels)

The overall goal of this technology area is to develop the basic and applied data base required to develop direct coal-fire gas turbine and diesel systems. Research activities are directed toward key technical problems associated with substituting coal or coal-derived gaseous fuels for distillate fuels or natural gas.

(vi) Underground Gasification

The overall objective of this technology is to substantially expand domestic coal reserves by utilizing coal that is presently not economically or technically feasible to mine. Research efforts are directed toward the definition of fundamental and applied technical, operational, and environmental parameters affecting underground gasification.

(vii) Surface Gasification

The overall goal of this technology area is to provide a cost effective and environmentally compatible energy system to meet the future needs of the utility, industrial, commercial, residential, and transportation sectors. Research activities are directed toward the development of advanced gasification systems for the production of electric power, synthesis gas, industrial fuel gas, and co-products (solids, liquids, and gases).

2. Natural Gas Supply and Utilization

This program supports development of advanced technologies for the extraction of natural gas from unconventional gas resources and the increased use of gas in new applications either directly or by conversion to a liquid product.

(i) Natural Gas Supply

The goals of the supply program are to identify potential reserves and their production potential, to reduce the uncertainty of the magnitude of unconventional gas resources and the conditions under which they will be produced, and to improve extraction technologies to the point of technical readiness.

(ii) Natural Gas Utilization

Increased utilization of natural gas in all applications is the goal of this effort. New uses for natural gas supplies and economic utilization of marginal supplies are being developed. Methods for converting gas to high value liquid products to enhance ease of transportation and expanded markets are being pursued.

3. Petroleum Research and Technology Development

This program supports basic and applied research in a variety of technologies to enhance the efficient recovery of oil. The major technologies and their objectives are as follows:

(i) Advanced Process Technologies

The overall goal of this technology area is to conduct fundamental research and pursue application of scientific discoveries relevant to recovery of oil, gas, and shale oil, and to develop a fossil energy-related knowledge base that will enable the production of fossil fuels in the Alaskan Arctic.

(ii) Tar Sands

The overall goal of this technology area is to develop new methods of increasing oil recovery after conventional methods have been applied. The program is directed toward changing the physical or chemical properties of an exhausted reservoir to facilitate further oil recovery and includes developing fundamental and applied data that can lead to improved or new process concepts for tar sand resources.

(iii) Oil Shale Technology

The overall goal of this technology area is to develop economically competitive and environmentally compatible extraction and conversion processes to convert oil shale to liquid fuels and other high value products. The program is directed toward characterizing the chemistry, kinetics, and emissions related to eastern and western oil shale processing.

FOR FURTHER INFORMATION CONTACT: Jerome S. Hensley, U.S. Department of Energy, Morgantown Energy Technology

Center, P.O. Box 880, Morgantown, WV 26507–0880.

Louie L. Calaway, Director,

Acquisition and Assistance Division, Morgantown Energy Technology Center.

Date: January 9, 1989.

[FR Doc. 89–1167 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award a Grant to the Geological Survey of Alabama

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for a grant under procurement request number 19–89BC14425.000 to the State of Alabama, Geological Survey of Alabama, for the "Establishment of an Oil and Gas Data Base for Increased Recovery and Characterization of Oil and Gas Carbonate Reservoir Heterogeneity".

SCOPE: The objective of this grant project is to stimulate increased hydrocarbon production in Alabama through resource characterization. The establishment of a resource assessment database will also allow the state, operators, and the DOE to better evaluate the state reservoirs and the remaining hydrocarbon resources. The intended research will (1) develop an Alabama oil and gas database for evaluating resources available from infill drilling and/or enhanced recovery, (2) characterize carbonate reservoir heterogeneity and fluid properties important to defining potential additional reserves, (3) apply the criteria for recognizing carbonate reservoir heterogeneities to the Smackover formation, and, (4) transfer the technologies to oil operators through publication's and workshops. The Geological Survey of Alabama (GSA) will make available to this research project the state well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), the GSA has been selected as the grant recipient. This activity would be conducted by the GSA using their own resources; however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough coverage of the state's reservoirs. Additionally, GSA has exclusive domestic capability to perform this activity. By conducting similar multidisciplinary reservoir studies of Alabama reservoirs, the GSA has become a unique repository of well record and sample information for the state of Alabama.

The term of the grant is for a three-year period at an estimated value of $1,310,000.00. This funding level will be equally shared between DOE and the State of Alabama.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: David N. Barnett, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236. Telephone: (412) 892–5912.

Date: January 4, 1989.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 89–1165 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Awards; Intent To Award a Grant to the Illinois State Geological Survey

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19–89BC14250.000 to the Illinois State Geological Survey (ISGS) for "Research on Improved and Enhanced Oil Recovery in Illinois through Reservoir Characterization."

SCOPE: The objective of this grant project is to increase knowledge of Illinois reservoir characteristics and trends and to encourage development of new production from known reservoirs. The intended research will: (1) Develop a public Illinois oil and gas database for evaluating resources available for infill drilling and/or enhanced recovery, (2) characterize reservoir heterogeneity and fluid properties important to defining potential additional reserves, (3) demonstrate the applicability of seismic and acoustic logging techniques to increasing hydrocarbon production, and (4) transfer the technologies to oil operates through publications and workshops. The ISGS will make available to this project the state well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.7(b)(2)(i)(B) the ISGS has been selected as the grant recipient. This activity would be conducted by ISGS using their own resources as promulgated in their annual report; however, DOE support of the activity would further enhance the public benefits to be derived by increasing the number of reservoirs that can be studied. Because of the present rate of well abandonments, rapid dissemination of information is significant to maintaining domestic oil production.

The term of the grant is for a five year period at an estimated value of $6,827,000.00. The DOE share is anticipated at $2,429,000.00, the remainder to be nonfederal monies provided by ISGS.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: David N. Barnett, Telephone: AC 412–892–5912.

Date: January 4, 1989.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 89–1166 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), the DOE, Morgantown Energy Center, gives notice of its plans to award a 24-month cost-shared Grant to the State of Wyoming, Department of Environmental Quality, Herschler Building, Cheyenne, Wyoming 82002, in the amount of $5,500,000. The DOE will fund 50 percent of the allowable costs up to a maximum of $2,750,000. The pending award is based on an unsolicited application for a research project entitled, "Characterization, Minimization, Treatment, and Disposal of Waste Streams Generated in Converting Western Coals to Solid Fuel," which was submitted pursuant to Annex I of the Memorandum of Understanding between the United States Department of Energy, Office of Fossil Energy and the State of Wyoming. The application proposes to address a specific set of problems which limits the ability of the United States to utilize the vast reserves of low ranked coals found in Wyoming to meet the national objective of

developing domestic sources of energy in an economically sound and environmentally prudent manner. The goal of these studies is to facilitate the successful development of advanced coal processing/conversion technologies which have the potential to enhance the commercial attractiveness and marketability of Wyoming coals. The research efforts will involve the characterization of waste streams, the study of ways to minimize the waste streams produced, and the identification of suitable waste water treatment and disposal methods applicable to the processing of Wyoming coals in these advanced coal processing/conversion technologies.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505, Telephone: (304) 291–4241, Grant No. DE–FG21–89MC26287.

Date: January 9, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–1168 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–69–NG]

Seagull Marketing Services, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting Seagull Marketing Services, Inc. (Seagull), blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA docket No. 88–69–NG authorizes Seagull to import up to 150 Bcf of natural gas from Canada and to export up to 150 Bcf of domestic natural gas to Canada over a two-year term beginning on the date of first import or export.

A copy of this order is available in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on December 31, 1988

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–1169 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP88–263–004 and RP88–92–008]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 12, 1989.

Take notice that United Gas Pipe Line Company (United) on January 6, 1989, tendered for filing the following tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1:

To Be Effective October 1, 1988

Substitute Eighth Revised Sheet No. 7
Substitute Sixth Revised Sheet No. 11
Substitute Nineteenth Revised Sheet No. 23
Eleventh Revised Sheet No. 72–A
Fifth Revised Sheet No. 72–B
Original Sheet No. 72–B1
Third Substitute Original Sheet No. 74–X1
Original Sheet No. 74–X2
Original Sheet No. 74–X3
Original Sheet No. 74–X4

United states that this filing is made pursuant to the Director's Office of Pipeline and Producer Regulation Letter Order dated December 15, 1988 (Letter Order) which rejected United's November 14, 1988 filing to comply with the Commission's October 28, 1988 order in this docket.

United states that the Letter Order directed United to refile tariff sheets to specify how the overrun charges would be applied, referencing Commission Order issued November 21, 1988 in RP88–92–003, and to state the conditions under which authorized and unauthorized overrun charges would apply.

United states that these tariff sheets set forth the terms and conditions of authorized and unauthorized takes above the customer's Monthly D2 nomination, including nomination and scheduling procedures, as well as applicable rates and penalties consistent with the December 15, 1988 Letter Order. United states that all sales service between the customer's Monthly D2 and its Monthly MDQ (MDQ times the number of days in the month) shall be firm service. The rate applicable monthly to authorized takes in excess of a customer's monthly D2 nomination (Monthly D2) is the 100% load factor rate for Rate Schedules DG, G, and PL.

United also states that the 100% load factor rate will be charged monthly for unauthorized firm sales service between the customer's Monthly D2 and its Monthly MDQ. An annual penalty of $5.00 per Mcf is applied to unauthorized takes in excess of 102% of a customer's Annual D2 (sum of monthly nominated D2s) up to 104% of its Annual D2. A $10.00 per Mcf annual penalty applies to unauthorized takes in excess of 104% of the Annual D2 in an Operating Year (November–October). United further states that the annual $5.00 and $10.00 penalties would not apply if the excess takes are less than the customer's Annual CEQ. United states these annual penalties are to be offset with any applicable CEQ penalties assessed on a daily and monthly basis pursuant to Section 12.7 of the General Terms & Conditions of United's tariff.

United states that copies of this filing were served on United's Docket Nos. RP88–263 and RP88–92 service lists with which Docket No. RP88–263 was consolidated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before January 20, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motion 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 desiring to become a party must 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. 89–1085 Filed 1–17–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3506–3]

Air Quality; Revision To EPA Policy Concerning Ozone Control Strategies and Volatile Organic Compound Reactivity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revision of EPA policy.

SUMMARY: This notice announces the revision of EPA's policy announced in "Recommended Policy on the Control of Volatile Organic Compounds," published on July 8, 1977 (42 FR 35314) and amended on June 4, 1979 (44 FR 32042), May 16, 1980 (45 FR 32424), and July 22, 1980 (45 FR 48941). Specifically, this notice adds 4 halocarbon compounds to the list of organic compounds which are negligibly reactive and thus may be exempt from regulation under State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone. States may not take credit for controlling these compounds in their ozone SIP control strategies. The 4 compounds are:

1. Dichlorotrifluoroethane (HCFC–123)
2. Tetrafluoroethane (HFC–134a)
3. Dichlorofluoroethane (HCFC–141b)
4. Chlorodifluoroethane (HCFC–142b)

DATES: This policy revision is effective January 18, 1989.

ADDRESS: The public docket for this action, A–88–33, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Office of Air Quality Planning and Standards, Air Quality Management Division, (MD–15), Research Triangle Park, NC 27711, phone (FTS) 629–5505, (919) 541–5505.

SUPPLEMENTARY INFORMATION: In previous policy statements concerning the control of volatile organic compounds (VOC), the EPA established a list of compounds, consisting of methane, ethane, methylene chloride (dichloromethane), methyl chloroform (1,1,1–trichloroethane) and eight additional chlorofluorocarbons (CFC's) which have negligible photochemical reactivity and thus should be exempt from regulation under SIP's to attain the NAAQS for ozone.

The Agency has received a request from the Alliance for Responsible CFC Policy (the "Alliance"), a coalition of CFC producers and users, asking that a number of substitutes for fully halogenated CFC's (Table 1) be added to EPA's list of negligibly reactive VOC's. The Alliance cited two primary reasons for their request:

(1) The CFC substitutes covered by the request are less photochemically reactive than others currently on the "exempt" list and therefore should also be considered negligibly reactive; and,

(2) If the U.S. is to meet its commitments embodied in the Montreal Protocol on Substances That Deplete the Ozone Layer, substitutes for the regulated CFC's must be developed and unnecessary barriers to their commercialization and use should be removed.

These issues and EPA's response to the request are discussed in further detail below.

TABLE 1.—COMPOUNDS COVERED BY ALLIANCE PETITION

Compund	Chemical name	CAS No.
HCFC 123	Ethane,2,2-dichloro-1,1,1-trifluoro-.	306-83-2
HCFC 124	Ethane,2-chloro-1,1,1,2-tetrafluoro-.	2837-89-0
HFC 125	Ethane,pentafluoro-	354-33-6
HFC 134a	Ethane,1,1,2-tetrafluoro-.	811-97-2
HCFC 141b	Ethane,1,1-dichloro-1-fluoro-.	1717-00-6
HCFC 142b	Ethane,1-chloro-1,1-difluoro-.	75-68-3
HFC 143a	Ethane,1,1,1-trifluoro-	420-46-2
HFC 152a	Ethane,1,1-difluoro	75-37-6

Four classes of perfluorocarbons:

1. Cyclic, branched, or linear, completely fluorinated alkanes. Example: Perfluorohexane, 355–42–0.

2. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations. Example: Cyclic $C_8F_{16}O$, 355–36–4.

3. Cyclic, branched, or linear, completely fluorinated teriary amines with no unsaturations. Example: Perfluorotributylamine, 311–89–7.

4. Sulphur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. Example: Trifluoromethane sulfurpentafluoride, 373–80–8.

Reactivity And Tropospheric Ozone Forming Potential

Since the reactivities of the compounds in Table 1 are so low that they cannot be measured experimentally, the Alliance petition is based on theoretical predictions of their ozone-forming potential. By well established theory, the first step in the process by which VOC's produce ozone is the reaction of VOC with hydroxyl (OH) radicals. VOC's that react quickly with OH may or may not produce ozone—it depends on how the VOC would behave subsequent to the OH attack. VOC's, however, that react very slowly with OH are certain not to produce significant ozone buildup. Thus, the Alliance request presents data on the OH reaction rate constants (kOH), for the Table 1 compounds relative to the rate constants for several of the compounds currently listed as negligibly reactive. Ethane is the most reactive of the compounds currently listed. The kOH data presented in the request indicate that the reactivity of the Table 1 compounds is at least an order magnitude less than that of ethane. The EPA agrees that based on this information, these compounds can be considered for addition to the current list of negligibly reactive VOC's.

Need To Encourage Substitutes for Ozone Depleters

On August 12, 1988 (53 FR 30566), EPA published domestic regulations implementing the Montreal Protocol on Substances that Deplete the Ozone Layer. The EPA's regulation and the Protocol require a fifty percent reduction in the production and consumption (defined as production plus imports minus exports) of specified chlorofluorocarbons phased in over the next 10 years.

As part of the Regulatory Impact Analysis [1] supporting the regulation, EPA analyzed a range of potential methods of reducing the use of the regulated chemicals including increased recycling, shifts to product substitutes, and the introduction and use of chemical substitutes. This analysis underscored the key role of chemical substitutes in attaining the reductions in CFC use called for by the regulation and in minimizing the costs of achieving those reductions.

The Alliance request claims that industry will incur substantial costs and regulatory uncertainty in meeting State and local ambient ozone requirements and therefore will be hampered in its transition to these chemical substitutes unless they are exempt from VOC regulations. Since the current fully halogenated CFC's are exempt, the Alliance argues that firms using these chemicals are not going to switch from a chemical "that is exempt from regulation under a federally-enforceable SIP to one which faces immediate regulatory hurdles, future regulatory uncertainty, substantial regulatory expenses, and inconsistent State air permitting regulations."

The Allaince request includes information indicating that the Table 1 substitutes have a negligible stratospheric ozone depletion potential. As stated in the request, the ozone depletion potential of the Table 1 compounds, relative to several of the currently used CFC's covered by the

[1] Regulatory Impact Analysis: Protection of Stratospheric Ozone. Office of Air and Radiation. August 1988.

Montreal Protocol (CFC–11 and CFC–12), ranges from zero to 0.1.

The EPA agrees with the Alliance concerning the relative impact of the substitutes on stratospheric ozone depletion and with their contention that there is a strong need to facilitate the use of environmentally acceptable substitutes that have little or no impact on stratospheric ozone. Today's decision to add certain chemicals to the list of negligibly reactive compounds is being taken in the context of EPA's implementation of the Montreal Protocol, and is not intended to reopen, at this time, broader issues of exempting other chemicals that may be negligibly reactive. In this context, EPA focused its attention on four specific chemicals covered by the request that are being actively considered by a wide range of industries as the primary substitutes for the regulated chlorofluorocarbons (HCFC–123, HCFC–141b, HCFC–142b, and HFC–134a).

HCFC–123 and HCFC–141b have physical and chemical properties similar to CFC–11 and therefore are being examined for use in the foam-blowing and certain refrigeration applications. HFC–134a has physical and chemical properties similar to CFC–12 and is being considered by firms involved with refrigeration, air conditioning and certain foam uses. HCFC–142b is a chemical already used in commerce with the potential for expanded use alone or as a blend primarily in refrigeration and foam applications.

Comments by the Alliance [2] submitted on the August 12, 1988 advance notice of proposed rulemaking (53 FR 30604) which accompanied EPA's final rule implementing the Montreal Protocol, also demonstrated that industry-wide efforts have focused on the four potential chemical substitutes that EPA is adding to the list as exempt under VOC controls. These comments present a detailed description of activities to construct plants to produce various quantities of HCFC–141b/142b, HCFC–123, and HFC–134a, and to continue and expand tests of products using these chemicals.

Based on the foregoing discussion, EPA is today adding HCFC–123, HFC–134a, HCFC–141b, and HCFC–142b to the list of negligibly reactive VOC's which may be exempt from ozone SIP controls. The effect of this action will be to facilitate the transition away from stratospheric ozone-depleting chemicals without adversely affecting efforts to control ground-level ozone concentrations. This action does not affect ongoing or future toxicity reviews of these or other proposed CFC substitutes.

The EPA is not acting on the other candidate chemicals submitted by the Alliance because currently available information suggests that these chemicals either are not likely to become substitutes for significant uses of CFC's or because they are at an earlier stage in their research and development process. A convincing case cannot now be made that they are likely to significantly contribute to industry's efforts to shift away from fully-halogenated CFC's thereby reducing the risks of ozone depletion. Should this situation change in the future, EPA would reconsider whether to add other CFC substitutes to the list of negligibly reactive compounds.

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*).

Date: January 5, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–1136 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

[2] Alliance for responsible CFC Policy, RE: Comments of the Alliance for Responsible CFC Policy on Advance Notice of Proposed Rulemaking, Protection of Stratospheric Ozone (53 FR 30604, August 12, 1988). November 1, 1988, Docket No. A–88–27, Central Central Docket Section, U.S. EPA.

[FRL–3505–9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Martell Cogeneration Limited Partnership (formerly American Forest Product Company), EPA Project Number SJ 83–04–A

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on November 30, 1988, the Environmental Protection Agency issued a modified PSD permit (originally issued on April 2, 1985, and amended on December 20, 1985) under EPA's federal regulations 40 CFR Part 52.21 to the applicant named above. The original PSD permit grants approval to construct and operate a 10-megawatt wood-fired cogeneration facility located at the applicant's existing sawmill in Martell, Amador County, California. This major modification allows increases in the allowable carbon monoxide (CO) and hydrocarbon (HC) emission rates since these emissions have proven to be higher in actual operations than the levels requested in the original permit application. The permit modification is subject to certain conditions, including an allowable emission rate as follows:

Pollutant	Averaging period	Emission limits (the more stringent of)
CO	3-hour	930 lbs/hr or 3500 ppmv 12% CO_2
	8-hour	590 lbs/hr or 2200 ppmv 12% CO_2
HC	2-hour	35 lbs/hr

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

DATE: The PSD permit modification is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within 60 days of the date of this notice.

Date: January 5, 1989.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 89–1137 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44523; FRL–3506–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on anthraquinone (CAS No. 84–65–1), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a

notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for anthraquinone was submitted by Mobay Corporation pursuant to a test rule at 40 CFR 799.500. It was received by EPA on December 28, 1988. The submission describes acute toxicity testing to Eastern Oysters (Crassostrea virginica), Daphnids (Daphnia magna) and Bluegill Sunfish (Lepomis macrochirus) under flow-through conditions. Acute toxicity testing is required by this test rule. This chemical is used in the production of anthraquinone dyes and as a catalyst in the paper pulping industry.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44523). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 10, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-1130 Filed 1-17-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51721A; FRL-3506-7]

Certain Chemical Premanufacture Notice; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This notice announces receipt of one premanufacture notice(s) that were inadvertantly misstated in publication in the **Federal Register** on December 9, 1988 (53 FR 49786).

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M. Street, SW, Washington, DC 20460 (202) 382-3725.

DATES: Close of Review Period: P 89-113 February 15, 1989.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-28327 in the **Federal Register** of December 9, 1988 (53 FR 49786) the following information for P-89-113 was inadvertantly misstated in OPTS-51721 and is corrected to read as follows:

P 89-113

Importer. Pennwalt Corporation.

Chemical. (S) 3-Ethylthiobutanal.

Use/Import. (G) Destructive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3,677 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: Strong species (Rabbit). Mutagenicity: Negative.

Date: January 3, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-1131 Filed 1-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-21]

Advisory Committee on Advanced Television Service, Implementation Subcommittee; Meeting

January 11, 1989.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on February 7, 1989, 1:00 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1, Policy and Regulation
4. Report of Working Party 2, Transitioin Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1120 Filed 1-17-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Stephen W. Staples, Jr. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I

Applicant/City/State	File No.	MM Docket No.
A. Stephen W. Staples, Jr., Monticello, KY	BPH-880107MR	88-555
B. Ricky Allen Burke, Monticello, KY	BPH-880112MD	
C. Monticello-Wayne County, Media, Inc., Monticello, KY	BPH-880112ME	

Issue Heading and Applicant(s)

1. Comparative—A,B,C

2. Ultimate—A,B,C

II

Applicant/City/State	File No.	MM Docket No.
A. Mexican-American Communications Entertainment Broadcasting Group, Bryan, TX	BPH-880113MA	88-565
B. Divcon Associates, Inc., Bryan, TX	BPH-880114MR	
C. Diversified Communications, Bryan, TX	BPH-880114NI	

Issue Heading and Applicant(s) 2. Ultimate—All III

1. Comparative—All

Applicant/City/State	File No.	MM Docket No.
A. Mt. Washington Valley Broadcasting, Limited Partners, Conway, NH	BPH-870909ME	88-556
B. Jeffrey M. Messerman and Cathy R. Messerman d/b/a Carroll County Broadcasting, Conway, NH	BPH-870909MI	

Issue Heading and Applicants 2. Ultimate—A,B IV

1. Comparative—A,B

Applicant/City/State	File No.	MM Docket No.
A. American Indian Broadcast Group, Inc., San Angelo, TX	BPH-870921MB	88-552
B. Southwest Texas FM Limited Partnership, San Angelo, TX	BPH-870922MC	

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 a consolidated proceeding upon the issues whose headings are set forth below. 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 below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copy during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 89-1124 Filed 1-17-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Baker, Robert S., et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert S. Baker,* to acquire 4.8 percent of the voting shares of Minneahaha Banshares, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire The First National Bank in Sioux Falls, Sioux Falls, South Dakota, and Farmers State Bank of Flandreau, Flandreau, South Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joe M. Bennatte,* Hempstead, Texas, and *Edmund R. Covel,* Houston, Texas; to each acquire 50 percent of the voting shares of Community Bank, Katy, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California, 94105:

1. *Dr. John H. Doede,* San Diego, California; to acquire 61.42 percent of the voting shares of Crown Bancorp, Coronado, California, and thereby indirectly acquire Bank of Coronado, Coronado, California.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1075 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Eastchester Financial Corp. et al.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-30150) published at page 66 of the issue for Tuesday, January 3, 1989.

Under the Federal Reserve Bank of New York, the entry for Eastchester

Financial Corporation, is amended to read as follows:

1. *Eastchester Financial Corporation,* White Plains, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Eastchester Savings Bank, White Plains, New York, which currently engages in Savings Bank Life Insurance, and offers life insurance and annuity products through its subsidiary ESB Agency, Inc. Applicant has committed to terminate ESB Agency's activities within two years of consummation, and to limit its activities during the two year period to renewing existing policies, and will continue Bank's SBLI activities following consummation.

Comments on this application must be received by February 1, 1989.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1079 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Equimark Corp. and Equimanagement, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 2, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation and Equimanagement, Inc.,* Pittsburgh, Pennsylvania; to acquire 90 percent of the voting shares of Treasure Valley Bancorp, Inc., Fruitland, Idaho, and thereby indirectly acquire Treasure Valley Bank, Fruitland, Idaho. In connection with this application, BHC Acquisition Corp., Fruitland, Idaho, has applied to acquire 99.30 percent of the successor by merger to TVB Acquisition Bank, Fruitland, Idaho. Comments on this application must be received by January 27, 1989.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Four County Bancshares, Inc.,* Allentown, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Four County Bank, Allentown, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reliable Community Bancshares, Inc.,* Perryville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Perryville, Perryville, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texop Bancshares, Inc.,* Dallas, Texas, and Texop Bancshares, II, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of North Texas Bank, Lewisville, Texas, and thereby indirectly acquire American National Bank of Plano, Plano, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission-Valley Bancorp,* Pleasanton, California; to acquire 100 percent of the voting shares of The Bank of Milpitas, N.A., Milpitas, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1076 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Wood Lake Bancorp., Inc., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wood Lake Bancorporation, Inc.,* Wood Lake, Minnesota; to acquire Simonson Insurance Agency, Hanley Falls, Minnesota, and thereby engage in general insurance activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(C)(iii) of the Board's Regulation Y. These activities will be conducted in Hanley Falls, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1077 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Union Planters 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 February 2, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to engage *de novo* in purchasing short-term, high quality loans and loan participations from major money center banks and to make loans to institutions which are to be merged with or acquired by Applicant pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sanwa Bank, Ltd.*, Osaka, Japan; to engage *de novo* through its subsidiary, Sanwa Bank Trust Company of New York, New York, New York, certain trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1078 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/27/88 AND 12/31/88

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
William Street Acquisition Corporation; British & Commonwealth Holdings PLC; William Street Holdings, Inc	89-0522	12/28/88
Jeffrey A. Marcus; Tele-Communications, Inc.; WestMarc Communications, Inc	89-0523	12/28/88
General Electric Company; Tele-Communications, Inc; Tempo Television, Inc.	89-0568	12/28/88
Chargeurs S.A.; Irene Hart Srodek; Hart Incorporated	89-0594	12/28/88
Century City Holdings, Limited; Aircoa Associates; Aircoa Companies, Inc	89-0634	12/28/88
The 1964 Simmons Trust; Lockheed Corporation; Lockheed Corporation	89-0647	12/28/88
Citicorp; Inspiration Resources Corporation; Inspiration Leasing Inc	89-0666	12/28/88
Golder, Thoma, Cressey Fund II; Nortek, Inc.; Montrose Products Company Division	89-0672	12/28/88
Framatome S.A.; Burndy Corporation; Burndy Corporation	89-0706	12/28/88
Blue Cross and Blue Shield of Maryland, Inc.; Plan Investment Fund, Inc.; Plan Investment Fund, Inc	89-0707	12/28/88
Abdullah Taha Bakhsh; Textron Inc.; Gorham Division	89-0699	12/29/88
Giant Group, Ltd.; Pomona Acquisition Corp.; Pomona Acquisition Corp	89-0770	12/29/88
Barris Industries, Inc.; Pomona Acquisition Corp.; Pomona Acquisition Corp	89-0771	12/29/88
Barris Industries, Inc.; Media General, Inc.; Garden State Paper Company, Inc., and GSP Recycling Corp	89-0772	12/29/88
Group Financial Partners, Inc.; Honeywell, Inc.; HI's Defense Communications & Production Div	89-0570	12/30/88
ConAgra, Inc.; The Pillsbury Company; Porr Corporation and TPC Transportation Company	89-0646	12/30/88
Thomson S.A.; General Electric Company; General Electric Company	89-0716	12/30/88
Ford Motor Company; Douglas Wolf; IPG Financial Services, Inc	89-0782	12/30/88
Andromede S.A.; McKesson Corporation; "21 Brands, Inc., Distillerie Riunite di Liquori, S.p.A	89-0635	1/03/89
H.J. Heinz Company; Portion Pac, Inc.; Portion Pac, Inc	89-0670	1/03/89
Delta Woodside Industries, Inc.; TCW Special Placements Fund I; O'Bryan Bros., Inc	89-0701	1/03/89
Stiftung Hasler Werke; Rockaway Corporation; Rockaway Corporation	89-0702	1/03/89
Exxon Corporation; Compagnie Financiere de Paribas; Martinez Terminals Limited	89-0720	1/03/89
Ekco Group, Inc.; Woodstream Corporation; Woodstream Corporation	89-0722	1/03/89
Healthtrust, Inc.—The Hospital Company; Healthtrust, Inc.—The Hospital Company; Eastern Idaho Regional Medical Center-Partnership	89-0730	1/03/89
Union National Corporation; Pennbancorp; Pennbancorp Investment Company	89-0731	1/03/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/27/88 AND 12/31/88—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Japan Air Lines Company, Ltd.; John H. Magoon, Jr.; HAL, Inc	89-0739	1/03/89
Asahi Glass Company, Ltd.; Komag, Incorporated; Komag, Incorporated	89-0742	1/03/89
Varlen Corporation; Consolidated Metco, Inc.; Consolidated Metco, Inc	89-0743	1/03/89
John Hancock Mutual Life Insurance Company; Chicago Milwaukee Corporation; Milwaukee Land Company	89-0757	1/03/89
Huhtamaki Oy; L.S. Heath & Sons, Inc.; L.S. Heath & Sons, Inc	89-0761	1/03/89
Nippondenso Co. Ltd.; Michigan Automotive Compressor, Inc. (Joint Venture); Michigan Automotive Compressor, Inc. (Joint Venture)	89-0765	1/03/89
Toyoda Automatic Loom Works, Ltd.; Michigan Automotive Compressor, Inc. (Joint Venture); Michigan Automotive Compressor Inc. (Joint Venture)	89-0766	1/03/89
Richard E. Jacobs; Carlson Real Estate Corporation; Carlson Real Estate Corporation	89-0781	1/03/89
James H. Possehl; Gibralter Financial Corporation; GFC Leasing Corporation	89-0789	1/03/89
Abbott Laboratories; Takeda Chemical Industries, Ltd.; Takeda (TAP), Inc. and TAP Pharmaceuticals partnership	89-0796	1/04/89
Takeda Chemical Industries, Ltd.; Abbott Laboratories; Abbott (TAP), Inc. and TAP Pharmaceuticals partnership	89-0797	1/04/89
Value Equity Associates I, L.P.; Big Bear, Inc.; Big Bear, Inc	89-0467	1/05/89
American Family Corporation; Christopher J. Brennan; Pegasus Broadcasting of Columbus, Georgia, Inc	89-0738	1/05/89
Dawson International PLC; James W. Hart; Reeves Brothers, Inc	89-0667	1/06/89
Westinghouse Electric Corporation; Perceptics Corporation; Perceptics Corporation	89-0668	1/06/89
MTH Holdings, Inc.; Big Bear, Inc.; Big Bear, Inc	89-0690	1/06/89
Charles E. Bradley; Maxxam Inc.; Kaiser Aluminum & Chemical Corporation	89-0711	1/06/89
M.A. Hanna Company; Jon M. Huntsman; Polycom Huntsman, Inc	89-0763	1/06/89
Pegasus Aircraft Partners, L.P.; Irving Bank Corporation; New DC-9T-I, Inc	89-0784	1/06/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-1072 Filed 1-17-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published monthly, updated to include laboratories which successfully complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is recertified as meeting the Guidelines' requirements.

FOR FURTHER INFORMATION CONTACT: Office of Workplace Initiatives, National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," set strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

Maryland Medical Laboratories, 1901 Sulpher Spring Road, Baltimore, MD 21227, 301-247-9100

International Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301

American Medical Laboratories, 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

ChemWest Analytical Laboratories, Inc., 600 West North Market Blvd., Sacramento, CA 95834, 916-923-0840

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263 919-248-6494

Medtox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612-636-7466

Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619-278-5900

Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405-636-7041

South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601, 219-234-4176

International Toxicology Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312-633-3360

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

FR Doc. 89-1208 Filed 1-17-89; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committees Meetings; February

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's initial review committee in the month of February 1989. This committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Research Scientist Development Review Committee, NIMH.

Date and Time: February 16–18: 9:00 a.m.

Place: Holiday Inn Crowne Plaza, Rockville, MD 20852.

Status of Meeting: Open—February 16: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Sandra Buckhalter, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Substantive information, summary of meeting, and roster of committee members may be obtained as follows: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4333.

Date: January 12, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–1109 Filed 1–17–89; 8:45 am]

BILLING CODE 4160–20–M

Family Support Administration

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Allocations to States of FY 1989 Funds for Refugee[1] Social Services

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed allocations to States of FY 1989 funds for refugee social services.

ADDRESS: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW. Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, (202) 252–4563.

SUMMARY: This notice proposes the allocations to States of FY 1989 funds for social services under the Refugee Resettlement Program (RRP).

DATE: Comments on the allocations provided for in this notice will be considered if received by February 17, 1989.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $64,906,000 in FY 1989 refugee social service funds as part of the FY 1989 appropriations for the Department of Health and Human Services (Pub. L. 100–436).

Of the total of $64,906,000, the Director of ORR proposes to make available to States during FY 1989 approximately $55,000,000 (84.7%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees. The final allocation amounts would be adjusted to total 85% of the available funds after taking into consideration any population adjustments (see Section VI, below).

The population figures include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $55,000,000 covered by this notice, the Director proposes to allocate funds directly to States in the following manner:

- $52,500,000 would be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1988 (including a floor amount of $75,000 for States which have small refugee populations).
- $2,500,000 would be allocated to each State on the basis of its proportion of the 3-year refugee population (including a floor amount of $5,000 to States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts (for social services) * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The approximately $9,700,000 in remaining social service funds (after the final allocation to States of 85% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds will support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued: Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984, and Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985. ORR expects to continue emphasis on discretionary grants for Community/Family Stability Projects for Refugees and to continue the Key States Initiative to address problems of persistent welfare dependency. Announcements will be made when additional initiatives are decided on.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be

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[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, includng U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985-1988 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three cirumstances exist: (a) The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; (b) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or (c) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473) amended section 412(e)(7)(A) of the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by March 31, 1989, in order to avail themselves of this special allocation.

II. [Reserved for discussion of comments in final notice.]

III. Proposed Allocation Formula

Of the funds available for FY 1989 for social services, $52,500,000 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1988 adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1989 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1988, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam as well as Cuban and Haitian entrants resettled after September 30, 1985. Figures on the

numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1989, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1986, 1987, and 1988. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1985, and September 30, 1988, who are thought to be living in each State as of October 1, 1988. The population estimates for the FY 1989 allocations cover refugees of all nationalities, Cuban/Haitian entrants, and Amerasians from Vietnam. Refugees admitted under the Federal Government's private-sector initiative are not included since their assistance and services are to be provided by the private sponsoring organization under an agreement with the Department of State.

Preliminary arrival figures for FY 1988 were used in the calculations. They will be replaced by final arrival figures in the final notice of FY 1989 allocations, but the effect on the award amounts is expected to be small.

All participating States submitted data on their secondary in-migration on Form ORR–11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in March 1988. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 13 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.77% to constrain the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1988, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

The following amounts are proposed for allocation for refugee social services in FY 1989:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1989

State	Refugees (1)	Cuban/Haitian entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Alabama	493	0	493	$126,042	$126,042	$5,963
Arizona	2,225	1	2,226	569,108	569,108	26,926
Arkansas	398	0	398	101,754	101,754	5,000
California	80,909	62	80,971	20,701,382	20,701,382	979,429
Colorado	1,896	0	1,896	484,739	484,739	22,934
Connecticut	2,189	1	2,190	559,904	559,904	26,490
Delaware	58	0	58	14,829	75,000	5,000
District of Columbia	561	1	562	143,683	143,683	6,798
Florida	5,320	261	5,581	1,426,862	1,426,862	67,508
Georgia	2,604	45	2,649	677,254	677,254	32,042
Hawaii	785	0	785	200,696	200,696	9,495
Idaho	508	0	508	129,877	129,877	6,145
Illinois	7,622	2	7,624	1,949,183	1,949,183	92,220
Indiana	497	1	498	127,321	127,321	6,024
Iowa	1,656	1	1,657	423,635	423,635	20,043
Kansas	1,553	0	1,553	397,046	397,046	18,785
Kentucky	759	0	759	194,049	194,049	9,181
Louisiana	1,869	2	1,871	478,348	478,348	22,632
Maine	550	0	550	140,615	140,615	6,653
Maryland	3,209	0	3,209	820,426	820,426	38,816
Massachusetts	9,204	7	9,211	2,354,923	2,354,923	111,417
Michigan	3,613	4	3,617	924,737	924,737	43,751
Minnesota	6,926	2	6,928	1,771,241	1,771,241	83,801
Mississippi	243	0	243	62,126	75,000	5,000
Missouri	1,875	3	1,878	480,137	480,137	22,716
Montana	141	0	141	36,049	75,000	5,000
Nebraska	497	0	497	127,065	127,065	6,012
Nevada	763	69	832	212,713	212,713	10,064
New Hampshire	250	0	250	63,916	75,000	5,000
New Jersey	3,201	88	3,289	840,879	840,879	39,784
New Mexico	297	0	297	75,932	75,932	5,000
New York	16,850	39	16,889	4,317,912	4,317,912	204,290
North Carolina	1,391	0	1,391	355,629	355,629	16,826
North Dakota	200	0	200	51,133	75,000	5,000
Ohio	2,145	0	2,145	548,400	548,400	25,946
Oklahoma	932	0	932	238,279	238,279	11,274
Oregon	2,368	0	2,368	605,413	605,413	28,643

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1989—Continued

State	Refugees (1)	Cuban/Haitian entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Pennsylvania	5,370	0	5,370	1,372,916	1,372,916	64,956
Rhode Island	1,225	5	1,230	314,467	314,467	14,878
South Carolina	188	0	188	48,065	75,000	5,000
South Dakota	215	0	215	54,968	75,000	5,000
Tennessee	1,996	0	1,996	510,306	510,306	24,144
Texas	9,798	2	9,800	2,505,509	2,505,509	118,541
Utah	1,304	1	1,305	333,642	333,642	15,785
Vermont	283	0	283	72,353	75,000	5,000
Virginia	4,977	3	4,980	1,273,207	1,273,207	60,238
Washington	7,205	0	7,205	1,842,060	1,842,060	87,152
West Virginia	20	0	20	5,113	75,000	5,000
Wisconsin	4,274	0	4,274	1,092,709	1,092,709	51,698
Wyoming	11	0	11	2,812	75,000	5,000
Total	203,423	600	204,023	52,161,364	52,500,000	2,500,00

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence through its ORR Regional Director. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering the United States during fiscal years 1986, 1987, and 1988, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. *Listings of refugees who are not identified by their alien numbers will not be considered.*

Any state evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 252–4568.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: January 10, 1989.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 89–1086 Filed 1–17–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[FDA 225–86–2002]

Memorandum of Understanding with the Food and Drug Administration and the National Food Authority of the Republic of the Philippines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, U.S. Department of Health and Human Services, and the National Food Authority of the Republic of the Philippines. This MOU describes the mutual goals of FDA and the National Food Authority of the Republic of the Philippines to ensure, by a system of inspection and export certification, the safety and quality of food products exported from the Philippines to the United States of America. FDA is also announcing the availability of an attachment to the MOU that lists the food products that are covered and other related information.

DATE: The agreement became effective September 18, 1986.

ADDRESS: Submit written requests for single copies of the MOU and its attachment to Frank M. MacKeith, Food and Drug Administration (HFF–3), 200 C St. SW., Washington, DC 20204, 202–485–0042.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing this memorandum of understanding.

Dated: January 10, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between The Food and Drug Administration, Department of Health and Human Services of the United States of America And The National Food Authority of the Republic of the Philippines Concerning Various Food Products Exported to the United States of America

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) of the United States of America and the National Food Authority (NFA) of the Republic of the Philippines in entering into this agreement are to:

1. Set forth the requirements, which are described on a product-by-product basis in the attachments to this memorandum, that products that are to be exported from the Philippines and offered for import to the United States must meet to be certified under this memorandum. FDA has established

these requirements under the laws and regulations that it administers.

2. Minimize the need for these products to be subject to extensive FDA sampling that would be necessary without certification under this memorandum.

3. Provide for the cooperative exchange of technical assistance, information, personnel, and research to help ensure the safety and quality of food products from the Philippines that are certified under this memorandum.

II. Definitions

For the purpose of this memorandum, both parties agree to the following definition:

Lot: A lot is the quantity of a product produced by one manufacturer during a discrete period of time not exceeding one (1) day. It is produced in one continuous process using a single processing line and packaged in identical containers identified by a unique code traceable to the manufacturer.

Other definitions may be found in the attachments to this memorandum. These additional definitions apply only to the specific food product that is the subject of the particular attachment in which the definition appears.

III. Substance of Agreement

The National Food Authority of the Republic of the Philippines

NFA is a government agency of the Republic of the Philippines, responsible for conducting the voluntary inspection of food products that have been imported or that are intended for export. To fulfull its responsibilities under this memorandum, NFA will direct its activities to ensuring that the food products described in the attachments to this memorandum will meet the safety and quality requirements of the United States. NFA will inspect products and collect and examine samples to ensure compliance with those requirements.

To fulfill its commitments and responsibilities under this memorandum, NFA will:

1. Inspect each lot of food product offered to it by a manufacturer for export to the United States. In this inspection, NFA will attempt to determine whether the lot of food meets FDA's requirements as set forth in the attachment for that food product. NFA's laboratory will ensure by appropriate procedures that these analyses are completed as described in Section V., Analytical Methodology.

2. Issue an export certificate only for those lots that meet the requirements stipulated for the particular food in the appropriate attachment.

3. Require that all containers of lots of food products for which an export certificate is issued be identified and marked with a unique lot number, and that all labeling information required by the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act be included on the label of each product that is included in a certified lot.

4. Include the following information on the certificate for each lot of food products that is to be exported to the United States:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results of the tests conducted as specified in the attachments to this memorandum;

d. Date of the certificate; and,

e. Name and stamp or seal of authorizing official.

5. Affix its validated certificate to the shipping manifest and the packing list that are supplied by the manufacturer. The manifest and list will indicate those lots of food that are physically present in each containerized cargo unit.

6. Furnish FDA with a copy of the current Philippine regulations and the procedures used to ensure that each product exported to the United States under certification meets the safety and quality requirements of the United States.

7. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls procedures that are used to ensure that food products that are described in the attachments to this memorandum are sanitary food products that are fit for human consumption. These processes and quality control procedures will be included as part of each attachment.

8. Share expertise with and provide assistance to FDA when necessary. Such mutual cooperation will include, but will not be limited to, the exchange of information about current, new, and improved methods of sampling and testing of the food products described in the attachments to this memorandum; the exchange of technical information; the exchange of administrative, regulatory and scientific personnel; the exchange of information about quality control operations and procedures; and, the exchange of data and research related to major food-caused health concerns. This sharing will help ensure the quality and safety of food products described in the attachments to this memorandum that are offered for import into the United States.

The Food and Drug Administration of the United States of America

FDA is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes. FDA directs its activities toward the protection of the public health of the United States by ensuring that food products are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure that there is compliance with the statutes that it enforces. FDA makes a concerted effort to ensure that foods that are imported into the United States meet the same standards as domestic products. To discharge these responsibilities regarding the food products listed in the attachments to this memorandum and to fulfill its commitments under this memorandum, FDA will:

1. Audit sample those products certified under this memorandum to determine whether they comply with the requirements set forth in the attachments that are applicable to the particular food products. FDA may, for any reason, examine lots that have been certified to ensure that they comply in all respects with the requirements that FDA has established under the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes.

2. Share with NFA any information obtained through its audit sampling.

3. Promptly notify NFA of any detention of a food product described in the attachments to this memorandum and of any modification of the statutes or the regulations that pertain to such a food product.

4. Share expertise with, and provide assistance to, NFA when necessary. Such mutual cooperation will include, but will not be limited to, the exchange of information about current, new, and improved methods of sampling and testing of the food products described in the attachments to this memorandum; the exchange of technical information; the exchange of administrative, regulatory, and scientific personnel; the exchange of information about quality control operations and procedures; and, the exchange of data and research related to major food-caused health concerns. This sharing will help ensure the quality and safety of the food products described in the attachments to

this memorandum that are offered for import into the United States.

IV. Sample Collection

Whenever possible, the same subsample will be used by FDA to determine the level, if any, of *Salmonella* and to determine compliance with the requirements set forth in the attachments to this memorandum and with any other specified FDA requirements. Samples of the food products described in the attachments to this memorandum will be collected in accordance with the applicable portions of the latest edition of (1) "Bacteriological Analytical Manual", Chapter I—"Food Sampling Plans and Initial Sampling Handling, for *Salmonella*"; (2) FDA's "Inspection Operations Manual", Chapter 4; or (3) the appropriate Compliance Program. For other attributes samples will be collected in accordance with the applicable attachment to this memorandum.

V. Analytical Methodology

Compliance with the requirements set forth in the attachment to this memorandum for each food product will be determined in accordance with the methods contained in the latest edition of:

1. "Bacteriological Analytical Manual," (currently 6th Ed., 1984), The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.
2. "Official Methods of Analysis, Association of Official Analytical Chemists," (currently 14th Ed., 1984), The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.
3. "Macroanalytical Procedures Manual" (FDA Technical Bulletin Number 5), 1984. The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.

VI. Participating Parties

A. The National Food Authority of the Republic of the Philippines, Matimyas Building, 101 East Rodrigues Street, Quezon City, Metro Manila, Philippines.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VII. Liaison Officers

A. For the National Food Authority, Republic of the Philippines: Director, Food Research Department, (Currently, Dr. Alicia O. Lustre), Food Terminal Inc., National Food Authority, Food Development Center, Taguig, Metro Manila, Philippines. Telephone: 845-1181 (U.S. Night time); 993-992 (U.S. Day time). Telex: ITT 045684 FTI PM.

B. For the Food and Drug Administration: Director, Division of Regulatory Guidance (HFF-310), (Currently, Mr. Howard N. Pippin), Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204, Telephone: 202-485-0187, Telex 197623 PHS PKLN.

VIII. Administrative Procedures

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this memorandum. All travel and per diem expenses incurred by FDA personnel for technical assistance or other activities in accordance with this memorandum will be borne by NFA.

Additional products may be added to the list of products subject to certification under this memorandum by agreement of the parties.

IX. Period of Agreement

This memorandum will become effective upon acceptance by both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and Accepted for the National Food Authority of the Republic of the Philippines.

By: Emil L. Ong,
Title: *NFA, Administrator.*
Date: September 18, 1986.

Approved and Accepted for the Food and Drug Administration of the United States of America.

By: Sanford A. Miller,
Title: *Director, CFSAN/FDA.*
Date: September 18, 1986.

[FR Doc. 89-1111 Filed 1-17-89; 8:45 am]
BILLING CODE 4160-01-M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Servcies (DHHS) is requesting nominations to fill three vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by Title XXI of the Public Health Service Act, enacted by Pub. L. 99-660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA-1 *et seq.*).

DATE: Nominations are to be submitted by February 15, 1989.

ADDRESS: All nominations for membership should be sent to Dr. Alan R. Hinman (address below).

FOR FURTHER INFORMATION CONTACT: Alan R. Hinman, M.D., Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, Room 1-24, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, (301) 443-0715.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for three vacancies on the National Vaccine Advisory Committee. Nominated invdividuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, on public health organizations. Members will be invited to serve four year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

DHHS has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Nomination Procedures: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nomineee should be aware of the nomination, willing to serve as a member of the committee and appear to have no conflict of interest that would preclude committee

membership. A curriculum vitae should be submitted with the nomination.

Dated: January 4, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-1147 Filed 1-17-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-09-4351-02]

Call for San Pedro Riparian Advisory Committee Nominations

AGENCY: Safford District, Bureau of Land Management, Interior.

ACTION: Call for Nominations for San Pedro Riparian Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill positions on the newly established San Pedro Riparian National Conservation Area Advisory Committee, pursuant to section 104(b) of the Arizona-Idaho Conservation Act of 1988. The Advisory Committee comprises seven members, with one member to be appointed from nominations provided by the Governor of the State of Arizona and one member to be appointed from nominations provided by the Supervisors of Cochise County, Arizona.

Initially, members of the Advisory Committee will be appointed under staggered term arrangement; with 2 members appointed for a term of 3 years, 3 members appointed for a term of 2 years, and 2 members appointed for term of 1 year. All subsequent appointments of the Advisory Committee will be for terms of 3 years. Terms of these initial appointments will expire on December 31, 1989, December 31, 1990, and December 31, 1991 as appropriate.

To ensure membership on the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the San Pedro Riparian National Conservation Area was created. These categories of interest include wildlife conservation, riparian ecology, archaeology, paleontology, recreation, environmental education, or other related disciplines.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of public lands in the San Pedro Riparian National Conservation Area. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Advisory Committee will normally meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Advisory Committee should provide the Safford District Manager at the address below with names, addresses, professions, biographical data, and category of interest for qualified nominees.

DATE: All nominations should be received by January 30, 1989.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

For Further Information Contact: Jerry Coolidge, Planning and Environmental Coordinator, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428-4040.

Date: December 20, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 89-1162 Filed 1-17-89; 8:45 am]

BILLING CODE 4310-32-M

[INT FES-89-1; (AZ-020-4410-08)]

Proposed Phoenix Resource Management Plan/Final Environmental Impact Statement; Phoenix District, AZ; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the proposed Phoenix Resource Management Plan/Final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the availability of the proposed Phoenix Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS). The RMP/FEIS addresses land use on 911,000 acres of public land in eight Arizona counties. These Arizona counties include Apache, Navajo, Yavapai, Maricopa, Pima, Pinal, Gila and Santa Cruz.

SUPPLEMENTARY INFORMATION: The issues addressed in the RMP/FEIS are: Land tenure adjustment, utility corridors and communication sites, areas of critical environmental concern (ACECs) and other special management areas, off-road vehicle designations, recreation management and land classifications.

The RMP/FEIS identifies and analyzes the BLM's proposed action alternative for management of the planning area's 911,000 acres of public land and 2.1 million acres of federal subsurface estate.

Under the proposed RMP, the BLM would establish seven resource conservation areas (RCAs) where 440,000 acres of public land would be retained and intensively managed and 450,000 acres of state and private land would be considered for acquisition. A total of 390,000 acres also would be made available for disposal through exchange and 45,000 acres for disposal through exchange or sale.

The RMP identifies seven utility corridors and five communication sites. The corridors represent the BLM's preferred utility corridor routings across the planning area's public land.

The RMP proposes designation of six areas of critical environmental concern (ACECs) encompassing 10,120 acres. An additional ACEC encompassing 9,400 acres is proposed for designation upon the BLM's acquisition of state land within the ACEC boundaries.

The proposed ACECs and resource use limitations are:

(1) Baboquivari Peak, 2,070 federal acres—close to motorized vehicles, initiate a mineral withdrawal, prohibit land use authorizations and surface occupancy for oil and gas lease development.

(2) Waterman Mountains, 1,960 federal acres—limit motorized vehicles to designated roads and trails, limit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(3) White Canyon, 1,920 federal acres—close White Canyon to motorized vehicles, limit motorized travel elsewhere to designated roads and trails, prohibit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(4) Larry Canyon, 80 federal acres—close to motorozed vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit domestic livestock grazing, prohibit surface occupancy for oil and gas lease development.

(5) Tanner Wash, 950 federal acres—close 30 acres to motorized vehicles, limit motorized travel elsewhere to designated roads and trails, prohibit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(6) Appleton-Whittell, 3,141 federal acres—limit motorized vehicles to designated roads and trails, limit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(7) Perry Mesa, 960 federal acres—designate as an ACEC upon the acquisition of 8,480 state acres, limit motorized vehicle to designated roads and trails.

The RMP proposes the closure of 11,760 acres to vehicular travel. On the planning area's remaining public land, vehicular travel would be limited to existing roads and trails or to designated roads and trails.

The RMP proposes a framework for managing the area's recreation resources through the designation of two special recreation management areas, five cooperative recreation management areas and five recreation and public purpose areas. In addition, establishing seven resource conservation areas would provide extensive open space recreation opportunities throughout the planning area.

The planning area is currently encumbered by five multiple use classifications. Under the proposed RMP, these classifications would be terminated.

The RMP/FEIS document also contains the transcripts of public hearings and copies of the written comments received concerning the draft RMP/EIS. The BLM's Phoenix District responses to many of the public comments are included.

The document contains procedures for protesting the plan or any part of it. These procedures also can be found in the Code of Federal Regulations (43 CFR 1610.5–2).

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after 30 days from the date of this notice.

Reading copies of the Proposed Phoenix RMP/FEIS are available at the following locations:

Office of Public Affairs, Interior Building, Bureau of Land Management, 18th and C Streets, NW., Washington, DC.

Bureau of Land Management, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona.

Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

For further information, contact:

Don Ducote, Bureau of Land Management, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Telephone (602) 863–4464, FTS 764–0501.

Charles Frost,

Acting District Manager.

[FR Doc. 89–927 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–09–4212–13; AZA–23085–B]

Amended Realty Action; Exchange of Public Land; Maricopa and Yavapai Counties, AZ

SUMMARY: The Notice of Realty Action published on November 4, 1988, Volume 53, Number 214, pages 44674 and 44675, is herein amended to include the following statement:

Certain federal lands included in the original Notice of Realty Action are currently leased to Phoenix Four-Wheelers, Inc., under the Act of June 14, 1926, as amended. At close of escrow, Phoenix Four-Wheelers, Inc., will relinquish their R&PP lease, the R&PP classification will be terminated and the lands opened for exchange only.

The affected lands are as follows:

T. 6 N., R. 2 W., Gila and Salt River Meridian, Arizona,
Sec. 18, E½SW¼, W½SE¼; comprising 160.00 acres.

Dated: January 11, 1989.

Robert D. Mitchell

Acting District Manager.

[FR Doc. 89–1096 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–32–M

[ID–943–09–4214–11; I–14894, I–14939]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a withdrawal for the Boise Reclamation Project be continued for an additional 100 years, which is the estimated remaining life of the improvements with which it is associated. Under the proposal, 123.42 acres of public land would remain closed to surface entry and the mining laws but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before April 18, 1989.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of April 21, 1922, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T. 2 N., R. 3 E.,
Sec. 10, lot 1, NW¼NE¼;
Sec. 11, lots 5 and 9.
The area described aggregates 123.42 acres in Ada County.

The lands are located along the Boise River below the Lucky Peak Dam and Reservoir Facility.

The purpose of the withdrawal is to protect the lands for the continued operation and maintenance of the dam and reservoir.

No change in the purpose or segregative effect of the withdrawal is proposed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 6, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–1161 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–09–4214–11; I–14869 et al.]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes the withdrawals made for protection of its Island Park Dam and Reservoir Facility be continued for a period of 50 years, which is the estimated remaining life of the associated improvements. Under the proposal, 5,296.91 acres of public land would remain closed to surface entry and the mining laws, but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before April 18, 1989.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes the land withdrawals made by the Secretarial Orders of March 6, 1933; March 23, 1934; September 13, 1934, and February 21, 1945, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located along the shores of the Island Park Reservoir and along Henrys Fork of the Snake River within the following-described townships:

Boise Meridian

T. 13 N., R. 42 E.
T. 12 N., R. 42 E.
T. 13 N., R. 43 E.

The total area involved aggregates 5,296.91 acres in Fremont County.

The purpose of the withdrawals is to protect the lands for the operation and maintenance of the Island Park Dam and Reservoir Facility. No change in the purpose or segregative effect of the withdrawal is proposed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: January 6, 1989.

William E. Ireland,

Chief, Realty Operations Section.

FR Doc. 89–1162 Filed 1–17–89; 8:45 am]

BILLING CODE 4310-CG-M

Minerals Management Service

Development Operations Coordination Document; Cliffs Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cliffs Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7709, Block 94, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 5, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 9, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–1107 Filed 1–17–89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 7, 1989. 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 February 2, 1989.

Carol D. Shull,

Chief of Registration, National Register.

PENNSYLVANIA

Lancaster County

Totten House, *1046 E. King St., Lancaster, 89000003*

SOUTH CAROLINA

Cherokee County

Hick, Zeno, House, *US 221 and Mill Gap Rd., Chesnee vicinity, 89000002*

Darlington County

Memorial Hall, *2nd St, between Home Ave. and Carolina Ave., Hartsville, 89000001*

[FR Doc. 89–1173 Filed 1–17–89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Renewal of Advisory Committees; Research Advisory Committee et al.

Pursuant to the Federal Advisory Committee Act, the Administrator of the Agency for International Development has determined that the renewal of the following advisory committees for an additional two years is in the public interest:

1. A.I.D. Research Advisory Committee.

2. The Advisory Committee on Voluntary Foreign Aid.

3. Board for International Food and Agricultural Development.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, Room 6892, Agency for International Development, Washington, DC 20523, (202) 647–8218.

Dated: January 3, 1989.

Jan Miller,

Assistant General Counsel.

[FR Doc. 89–1100 Filed 1–17–89; 8:45 am]

BILLING CODE 6116–01–M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on January 26–27, 1989 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street, NW., Washington, DC. The research priorities recommended by the Committee in recent years will be reviewed and summarized. In addition, reports from prior discussions on Urban Development, Fisheries and Education will be made.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:00 p.m. on January 26 and 12:00 noon on January 27. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau of Science and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875–4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Date: January 5, 1989.

[FR Doc. 89–1108 Filed 1–17–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 220]

CSX Transportation, Inc.; Abandonment Between Midland and Clare in Midland, Isabella, and Clare Counties, MI; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. to abandon its line of railroad between milepost 22.65 at or near Midland, MI, and a point approximately 2.5 miles east of milepost 52.00 at or near Clare, MI, the cutpoint of a segment of line recently sold to Tuscola and Saginaw Bay Railway Company.

A certificate will be issued authorizing abandonment 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 contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: January 9, 1989.

By the Commission, Chairman Gradiosn, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1118 Filed 1–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 21X)]

Southern Railway Co.; Abandonment Exemption Between Trenton and North Aiken, SC

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.3-mile line of railroad between milepost AB–8.0 at Trenton, SC, and milepost AB–17.3 at North Aikens, SC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cassation of service over the line either is pending with the Commission or with 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 under *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 February 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 7, 1989 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: Virginia K. Young, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exempton. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 23, 1989. 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. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1119 Filed 1–17–89;8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

January 13, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Import/Export One-Time Reporting Requirement; Identification of Regular Customer and Regular Supplier.

(2) No form number. Drug Enforcement Administration.

(3) One-time.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires regulated persons to provide the Attorney General with the identity of any regular customer or regular supplier not later than 30 days after the promulgation of the regulations in order to establish regular customer/supplier considerations. Information will be used by the DEA to determine which transactions are ineligible for waiver of the 15-day advance notice.

(5) 2,000 respondents at 4. hours per response.

(6) 8,000 estimated annual burden hours.

(7) Not applicable under section 3504(h).

(1) Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(2) No form number. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires regulated persons to report suspicious orders or theft/loss of listed chemicals/tableting and encapsulating machines to the DEA in order to prevent clandestine manufacture of a controlled substance.

(5) 300 respondents at .17 hours per response.

(6) 51 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

(1) Import/Export Declaration: Precursor and Essential Chemicals, Tableting and Encapsulating Machines.

(2) DEA 486. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals/machines to notify the DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(5) 2,000 respondents at .25 hours each.

(6) 500 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89–1180 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Consent Decree Pursuant to Safe Drinking Water Act; Centaur Petroleum Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on December 15, 1988, a proposed Consent Decree in *United States* v. *Centaur Petroleum Corporation and Centaur Industries Inc.* was lodged with the United States District Court for the Southern District of Indiana, Evansville Division. This agreement resolves a judicial enforcement action brought by the United States against defendant Centaur for violations of the Safe Drinking Water Act, underground injection control program. Centaur owned and operated nine secondary oil recovery wells in Plainville County, Indiana in violation of the Act and the EPA underground injection control regulations.

The consent decree provides for the payment of a civil penalty of $55,000 for these violations of the Safe Drinking Water Act and requires Centaur to continue to comply with the terms of its underground injection control permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land

and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *Centaur Petroleum Corporation and Centaur Industries Inc.*, D.J. Ref. 90–5–1–1–2667.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, Fifth Floor, United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204, or at the Region 5 office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–1097 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; Siloam Springs, AR et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 4, 1989 a proposed consent decree in *United States* v. *City of Siloam Springs, Arkansas, The State of Arkansas, and Allen Canning Co., Inc.*, Civil Action No. 88–5062, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at the City of Siloam Spring's (the "City") wastewater treatment plant. The complaint alleged that the City discharged pollutants into navigable waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Arkansas was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). Allen Canning Co. Inc., ("Allen Canning") is alleged to have violated section 307 of the Act, 33 U.S.C. 1317, by introducing pollutants into the City's wastewater treatment plant in violation of the general pretreatment regulations, 40 CFR 403.5. The complaint sought injunctive relief to require the Allen Canning to comply with the National Pretreatment Standards at 40 CFR 403.5, its Industrial User permit, and civil penalties for past violations. Among other things, the consent decree requires Allen Canning to conduct monitoring and sampling of the effluent it discharges into the City's wastewater treatment plant and to submit quarterly reports to EPA summarizing the results of the monitoring and sampling. Allen Canning is also required to take appropriate and timely correct any effluent violations. Allen Canning is also required to pay a civil penalty of $35,000 in settlement of the government's civil penalty claims. This consent decree only resolves the liability of Allen Canning and does not address the portions of the complaint against the City or the State of Arkansas. The United States has entered into a separate consent decree which settled its claims for civil penalties for past violations and injunctive relief against the City and the State of Arkansas.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *City of Siloam Springs, Arkansas et al.*, D.J. Ref. 90–5–1–1–2792.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payble to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–1098 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") filed a written notification with the Attorney General and the Federal Trade Commission on December 8, 1988 concerning the identities of additional members of the NCMS. The written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of the NCMS:

Adept Technologies, Inc., Advanced Technology Materials, Inc., Oracle, Inc., Weyburn-Bartel, Inc.

No other changes have been made in either the membership or planned activity of the NCMS.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15 and May 5, 1988, the NCMS filed additional notices identifying its initial membership and the Department of Justice published notice of those filings in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1988, 53 FR 20194. The NCMS filed other additional notifications of changes in membership on July 11, 1988 and September 13, 1988, notice of which appeared in the **Federal Register** on August 19, 1988, 53 FR 31771, and November 4, 1988, 53 FR 44680, respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–1099 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-03)]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATE AND TIME: February 9, 1989, 8:15 a.m. to 3 p.m.

ADDRESS: American Institute of Aeronautics and Astronautics, 10th Floor, Conference Room A, 901 D Street Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8720.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee is concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. Edward Donley and is currently composed of 17 members.

The meeting will be closed to the public from 1:45 p.m. to 3 p.m. for a discussion of matters which may involve trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session, the meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including the Committee members and other participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

February 9, 1989

8:15 a.m.—Welcome.
8:45 a.m.—Commercial Programs Update.
9:15 a.m.—Strategic Plan Factors Update.
10 a.m.—Subcommittee Reports.
1:45 p.m.—Closed Session.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-1128 Filed 1-17-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 17, 1989.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions.
Title: Application Instructions and Forms for the Editions Category.
Form Number: Not applicable.
Frequency of Collection: Annual.
Respondents: Humanities researchers and institutions.
Use: Application for funding.
Estimated Number of Respondents: 58 per year.
Frequency of Response: Once.
Estimated Hours for Respondents To Provide Information: 52 per respondent.
Estimated Total Annual Reporting and Recording Burden: 12,016.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 89-1112 Filed 1-17-89; 8:45 am]

BILLING CODE 7536-01-M

National Arts Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 3, 1989 from 9:00 a.m. to 6:30 p.m., and on February 4, 1989 from 9:00 a.m. to 6:15 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, February 3, 1989 from 9:00 a.m. to 5:30 p.m., and on Saturday, February 4, 1989, from 9:00 a.m. to 1:30 p.m. The topics for discussion will include Program Review and Guidelines for Opera-Musical Theater, Advancement, Arts Administration Fellows, Arts in Education and Music Ensembles, which will feature an Overview of the Orchestral World. In addition there will be discussions on the Five Year Planning Document, Open Architecture TV, Reauthorization of the Agency and International Activities.

The remaining sessions on Friday, February 3 from 5:30 to 6:30 p.m. and on February 4, 1989 from 1:30 to 6:15 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the

Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 10, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1102 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Sub-Committee to the National Council on the Arts will be held on February 2, 1989 from 3:00 p.m. to 5:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include a report on a retreat on Federal, state and local roles in support of arts institutions and planning for a review of Federal, state and local roles in support of individual artists.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5469, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

January 10, 1989.

[FR Doc. 89–1103 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Pannel (Special Exhibitions Section) to the National Council on the Arts will be held on February 6–10, 1989 from 9:00 a.m.– 5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be completely closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 10, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1104 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on January 23–24, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). The following topics will be discussed:

Monday and Tuesday, January 23–24, 1989—8:30 a.m. until the conclusion of business

A. Discussion by the Director of the Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards of 1989 Program Plans (Open)

B. Administrative Session, inlcuding future agenda, new members, and staffing (Open/Closed)

C. Discussion of West Valley Vitrification process (Open)

D. Presentations by the Department of Energy on Performance Allocation and Assessment (Open)

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: January 11, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–1143 Filed 1–17–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on January 23, 1989, Room 2F17 and 21, One White Flint North, 11555 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, January 23, 1989—12:00 Noon until 6:00 p.m.

The Subcommittee will review the NRC Staff policy statement on additional applications of leak-before-break technology.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 10, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-1142 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission issued for public comment on November 14, 1988, a proposed revision 3 to Regulatory Guide 1.9, "Selection, Design, Qualification, Testing and Reliability of Diesel Generator Units Used as Onsite Electric Power System at Nuclear Power Plants." The time limit on written comments is hereby extended to March 13, 1989.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to NRC at the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. Written comments are requested by March 13, 1989.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services.

Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 10th day of January 1989.

For the Nuclear Regulatory Commission.

R. Waye Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89-1139 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL and 50-444-OL; ASLBP No. 82-471-02 OL]

Public Service Co. of New Hampshire et al., Seabrook Station, Units 1 and 2, (Offsite Emergency Planning); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning), Docket Nos. 50-443-OL and 50-444-OL, is hereby reconstituted by appointing Administrative Judge Richard F. Cole in place of Administrative Judge Gustave A. Linenberger, Jr.; and Administrative Judge Jerry R. Kline in place of Administrative Judge Jerry Harbour. Because of the press of other Licensing Panel obligations, Judges Linenberger and Harbour are no longer able to serve on this Licensing Board.

Administrative Judge James H. Carpenter will continue to serve as a designated Alternate Member of the Licensing Board. Because of a schedule conflict, Administrative Judge John H. Frye III, is no longer available to serve as an Alternate Member of the Licensing Board.

As reconstituted, the Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman
Richard F. Cole, Member
Jerry R. Kline, Member
James H. Carpenter, Alternate Member

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Administrative Judge Richard F. Cole, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Jerry R. Kline, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge James H. Carpenter, Alternate Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

At present, a separate Licensing Board of limited jurisdiction (sometimes referred to for convenience as the "onsite" Board), exists to hear and resolve issues related to "safety and onsite emergency planning issues." Notice of Reconstitution of Board (September 9, 1985). *See* Unpublished Order (Instructions Re Submissions), dated October 7, 1985. In view of the existence of two Licensing Boards in this proceeding, the jurisdiction of each Board should be stated clearly.

The instant Board (sometimes referred to for convenience as the "offsite Board"), as reconstituted herein, stands in the shoes of the original Licensing Board constituted November 30, 1981, in response to the October 19, 1981, notice of hearing. *See* 46 FR 51330 (1981). Thus, the Licensing Board reconstituted herewith has general jurisdiction over all matters pertaining now or in the future to the application for a license to operate Units 1 and 2 of the Seabrook Station not otherwise expressly assigned to the onsite Board.

Dated at Bethesda, Maryland, this 10th day of January 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-1144 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-113]

University of Arizona; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-52, issued to the University of Arizona for operation of the Arizona TRIGA research reactor located on the University's campus in the city of Tucson, Pima County, Arizona.

The renewal would extend the expiration date of Facility License No. R-50 for thirty years from date of issuance, in accordance with the licensee's timely application for renewal dated October 17, 1988.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 17, 1989 the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: Petitioner's name and telephone number; date petition was mailed; University of Arizona; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Andrew Ives, University Attorney, University of Arizona, Administration Building 103, Tucson, Arizona 85721, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the appplication for renewal dated October 17, 1989, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of January 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1138 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26450; File No. 600-24]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Granting Temporary Registration as a Clearing Agency

On July 29, 1988, Delta Government Options Corp. ("Delta") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] for registration as a clearing agency [2] under section 17A of the Act.[3] In that filing, Delta requested, pursuant to section 17A(b)(1) of the Act,[4] several

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[1] 15 U.S.C. 78s(a) (1988).

[2] Delta also filed with the Commission, on April 25, 1988, a registration statement on Form S-1 under the Securities Act of 1933 (File No. 33-21409) ("Registration Statement"), effectiveness of which would permit Delta to issue 250,000 option contracts. On June 14, 1988, Delta filed an amendment to that Registration Statement.

[3] 15 U.S.C. 78q-1 (1988).

[4] Section 17A(b)(1) of the Act permits the Commission to grant exemptions from the requirements of section 17A if it finds that such

Continued

exemptions from the requirements of section 17A.[5] On August 5, 1988, the Commission published in the **Federal Register** notice of Delta's filing and invited commentators to submit, on or before August 26, 1988, comments concerning the application and exemption requests.[6] On August 24, 1988, the Commission extended the period for public comment to September 9, 1988.[7] Four comments were received all opposing the granting of Delta's application and exemption requests.[8]

On October 7, 1988, Delta filed an amendment to its clearing agency registration application.[9] That amendment contained, among other things, revisions to the Procedures of the Over-The-Counter Options Trading System ("System Procedures"). As a result of these revisions, Delta withdrew many of its requests for exemption from the requirements of section 17A and modified other exemption requests.[10] Notice of the amendment was published in the **Federal Register** on October 18, 1988, giving commentators 21 days from the publication date to respond to the amendment.[11] Four comments were received.[12]

Although Delta originally requested full clearing agency registration, the Commission believes temporary registration for a period of 36 months is appropriate. Accordingly, based on its exemptive authority under section 17A(b), this Order grants Delta temporary registration for 36 months and partially exempts Delta from section 17A(b)(3)(C) of the Act.[13]

I. Overview

This Order concerns Delta's request for registration as a clearing agency.[14] Delta,[15] together with RMJ Options Trading Corporation ("RMJ")[16] and SPNTCO,[17] would operate the Over-The-Counter Options Trading System ("System"). The System would be designed to provide brokerage services and a central clearing facility for the over-the-counter ("OTC") trading of options on United States Treasury securities ("Treasury options").[18]

Delta would the the issuer of all options traded through the System. With respect to option trades accepted for clearance in the System, Delta would issue in book-entry form a put or call option to the purchasing participant[19] and simultaneously purchase a matching put or call option from the selling participant, thereby ensuring that Delta's short positions would at all times be offset by corresponding long positions.[20] Delta would guarantee the

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exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A.

[5] *See* Letter from Gaston & Snow to the Commission, dated July 29, 1988, in which Delta requested partial or full exemptions from sections 17A(b)(3)(A), 17A(b)(3)(B), 17A(b)(3)(C), 17A(b)(3)(F), 17A(b)(3)(G), 17A(b)(3)(H), and 17A(b)(5) of the Act, as well as the Division of Market Regulation ("Division") standard requiring an independent annual review of a clearing agency's system of internal accounting controls. Many of those exemption requests have been withdrawn. *See* note 10 *infra*.

[6] *See* Securities Exchange Act Releases No. 25956 (August 1, 1988), 53 FR 29536.

[7] *See* Securities Exchange Act Release No. 26024 (August 24, 1988), 53 FR 33209.

[8] *See* Letters from Thomas R. Donovan, President and Chief Executive Officer, Chicago Board of Trade ("CBT"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Wayne P. Luthringshausen, Chairman of the Board, Options Clearing Corporation ("OCC"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Carl A. Royal, General Counsel, Chicago Mercantile Exchange ("CME"), to Jonathan Katz, Secretary, Commission, dated September 12, 1988; Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Jonathan Katz, Secretary, Commission, dated September 20, 1988.

[9] On October 7, 1988, Delta also filed a second amendment to its Registration Statement, which is incorporated by reference in Delta's amended clearing agency registration application. Delta attached as an exhibit to that amendment the Amended And Restated Operating And Brokerage Services Agreement Relating to The Over-The-Counter Options Trading System ("Operating Agreement"). This agreement describes in detail the operation of the System and the specific functions performed by Delta, RMJ Options Trading Corporation ("RMJ"), and Security Pacific National Trust Company ("SPNTCO").

[10] Delta has withdrawn its request for exemptions from sections 17A(b)(3)(B), 17A(b)(3)(F), 17A(b)(3)(G), 17A(b)(3)(H), 17A(b)(5), and the Division standard requiring an independent annual review of internal accounting controls. Delta requests a partial exemption from section 17A(b)(3)(C) of the Act. Delta also requests an interpretation of the term "rules of the clearing agency," (as defined in section 3(a)(27) of the Act) as it applies to Delta, to include all System Procedures and those provisions in Delta's corporate governance documents that set forth rights, duties, or obligations of participants or deal with the safeguarding of participant funds or securities.

[11] *See* Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40816.

[12] *See* Letters from Wayne P. Luthringshausen, Chairman of the Board, OCC, to Jonathan Katz, Secretary, Commission, dated November 2, 1988; Thomas R. Donovan, President and Chief Executive Officer, CBT, to Jonathan Katz, Secretary, Commission, dated November 8, 1988; Carl A. Royal, General Counsel, CME, to Jonathan Katz, Secretary, Commission, dated October 28, 1988; Roger D. Rutz, President and Chief Executive Officer, Board of Trade Clearing Corporation, to Jonathan Katz, Secretary, Commission, dated November 18, 1988.

[13] Several commentators argue that the Commission is reviewing Delta's clearing agency registration application in a "hurried" fashion. *See* OCC and CME letters. The Commission does not believe it has rushed its review of Delta's application. Commentators were given an extended 35-day comment period to respond to Delta's initial application and an additional 21-day comment period to respond to Delta's amended application. Indeed, the Commission's action today occurs nearly two months beyond the 90-day period recommended in section 19(a)(1) of the Act for clearing agency registration review.

Commentators further argue that the Commission has not reviewed all aspects of the System and has failed to present the entire System to the public. *See* OCC letter. The Commission has analyzed the issuance, clearance, and settlement aspects of the System in this Order and, as noted *infra*, the Commission staff has analyzed the System's brokerage function in a no-action letter issued simultaneous to this Order. Furthermore, the Commission has presented the entire System to the public in the form of Delta's clearing agency registration application, Delta's Registration Statements, and the Operating Agreement. The Commission notes that commentators appear to have addressed in considerable detail all aspects of the System, including the System's brokerage function. *See* letters from CBT, OCC, Amex, and CME.

[14] The Division today separately issued a letter to RMJ concerning the registration requirements of sections 5 and 6 of the Act. *See* discussion *infra* and letter from Richard Ketchum, Director, Division, to Robert A. McTamaney, Counsel for RMJ, Carter, Ledyard, & Milburn, dated January 12, 1989.

[15] Delta was incorporated in January 1988 in the State of Delaware. Delta has a $9 million initial capital base and is owned by: (1) Dots, Inc. (72%), a wholly-owned subsidiary of Cawsl Corp; and (2) SMG Options Corp. (28%), a New York Stock Exchange member and SEC-registered broker-dealer and investment adviser.

[16] RMJ is a registered government securities broker and a wholly-owned subsidiary of RMJ Securities, Inc., an inter-dealer broker of U.S. government and agency securities with offices in New York, London, and Tokyo ("RMJ Securities"), which in turn is a wholly-owned subsidiary of RMJ Holdings, Inc.

[17] SPNTCO is a national bank regulated by the Comptroller of the Currency ("Comptroller"). SPNTO is owned by Security Pacific Corporation, a bank holding company regulated by the Board of Governors of the Federal Reserve System ("FRB").

[18] Options traded in the System would be on underlying Treasury bills, bonds, and notes with an aggregate principal amount of $1 million. Terms of these options that would be uniform include the expiration date (*i.e.*, the Saturday following the third Friday of the expiration month), the maximum duration of the contract (*i.e.*, for Treasury bonds and notes, the earlier of two years from the date of issuance of the option or one month prior to the maturity or redemption date of the bond or note, and for Treasury bills, 13 calendar days prior to the maturity date of the bill), and the unit of trading (*i.e.*, underlying Treasury securities in the principal amount of $1 million). Terms such as the premium, exercise price, expiration month, and the yield and maturity of the underlying securities would be subject to negotiation between System participants.

[19] Each put and call would be an uncertificated security under Article 8 of the Uniform Commercial Code as in effect in the State of New York, and, as discussed in detail below, ownership thereof would be evidenced by a daily position report sent to the purchasing participant.

[20] For example, assume *A* (purchaser) and *B* (seller) effect a transaction in which *A* agrees to buy a call in two-year 7.5% Treasury notes in an aggregate principal amount of $1 million, entitling *A* to acquire those notes at part at any time within a six-month period. *B* agrees to write a six-month matching call against that position for a premium of $50,000. If the transaction is accepted for clearance, Delta would interpose itself in the trade by simultaneously (1) selling to *A* a six-month call on the notes for a premium of $50,000 and (2) buying a matching call from *B* with identical terms and premium.

performance of all obligations arising under these issued contracts (*e.g.*, Delta would guarantee the settlement of premium obligations and would assume the obligation to sell underlying Treasury securities at the strike price to the buyer of a call option upon the exercise of that option and to purchase underlying Treasury securities at the strike price from the buyer of a put option upon the exercise of that option).

In addition to issuing options and guaranteeing the performance of option holders and writers, Delta would perform the following functions. First, Delta would be responsible for admitting participants to the System. This responsibility would entail setting participant admission criteria and determining whether applicants meet these criteria. Second, as discussed below in detail, Delta would enforce its rules and procedures. Third, Delta would set participant margin requirements, trading limits, and position limits. Fourth, Delta would make determinations concerning the suspension of participants and direct the liquidation of a suspended participant's positions in accordance with System Procedures. Finally, as described below, Delta would obtain and maintain a $200 million credit enhancement facility.

A Delta participant trading through the System could proceed in one of two ways. The participant could instruct RMJ [21] to effect the trade with the *contra* party on an anonymous or "blind" basis [22] at the price quoted by the *contra* party through the communications network. RMJ would match [23] each brokered executed trade and report matched trades to Delta and SPNTCO.

Alternatively, the participant could communicate with a *contra* party based on quotes in the System or otherwise, and proceed to negotiate the trade either through RMJ or without using the RMJ brokerage service as an intermediary. Trades effected through RMJ or between participants without RMJ involvement would be reported by each participant to SPNTCO, which would match those trades and report them to Delta for clearance and settlement.

Under a contract with Delta, SPNTCO would act as clearing bank for the System. All trades effected between participants would be submitted to SPNTCO for acceptance.[24] Under the contract and System Procedures, SPNTCO would accept a trade [25] if both sides of the trade match, the trade does not result in a participant exceeding its trading or position limits, and neither participant has been suspended from the System.[26] Upon acceptance of a transaction for clearance by SPNTCO under Delta's procedures, Delta would issue the option underlying the transaction and guarantee the performance of obligations arising under that option.

With respect to issued options, SPNTCO would perform recordkeeping and safeguarding functions. SPNTCO would maintain on its books and records accounts for Delta necessary to receive premium and margin payments from participants, transmit payments to participants, and facilitate the settlement of exercised options.[27] SPNTCO wouldl safekeep all property and funds delivered to it for the account of Delta, as well as provide for the overnight investment of margin payments. SPNTCO would accept and assign exercise notices and receive and deliver funds and securities necessary for exercise settlements.[28] SPNTCO would prepare and distribute to participants daily margin, position, and exercise reports.[29]

II. Statutory Standards

Section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act and subject to certain exceptions, to register with the Commission.[30] Delta, as issuer and

[21] RMJ would provide brokerage services for System participants and would disseminate option bid and ask quotations to participants through an automated communications network. RMJ would own and maintain all computer software supporting the System, and RMJ Securities would own and maintain the computer hardware, data transmission network, and communication interfaces upon which that software was designed to operate. In establishing this automated communications network, RMJ would: (1) Install video monitors, controller, keypads, and attendant equipment at a participant's trading locations; (2) install dedicated data communication lines between the RMJ brokering location and a participant's trading location; (3) install dedicated voice communication lines between the RMJ brokering location and a participant's trading location; and (4) provide field engineering support services to maintain all equipment at a participant's location.

[22] Transactions in Treasury securities effected through a U.S. government securities broker typically are effected on a blind basis. Screens viewed by customers show securities' maturity dates, coupon rates, issuing agency, the best bid and ask prices quoted by customers for each issue, and the quantities of securities each customer who provides a quote is committed to sell or buy at the quoted price. The screens neither identify the customers whose quotations are displayed nor reveal the depth of the market (*i.e.*, the number and size of other orders waiting to be executed at the displayed price). *See* U.S. General Accounting Office, U.S. Government Securities: An Examination of Views Expressed About Access to Broker's Services, GAO/GGD–88–8 (1987) ("GAO Report").

[23] A trade matches if the writing or selling participant and the purchasing participant agree as to: (1) The identity of the other party to the transaction; (2) the type of option; (3) the variable terms of the option; (4) the amount of the premium; (5) the number of options purchased; and (6) the description of each party as either the purchasing, selling, or writing participant.

[24] Trades effected between 9:00 a.m. (all times refer to Eastern Standard Time) and 12:00 noon on a particular day must be submitted to SPNTCO for acceptance prior to 12:30 p.m. that day. Trades effected between 12:00 noon and 5:00 p.m. must be submitted by 5:30 p.m. *See* section 401 of the System Procedures.

[25] Delta would not require participants to pay premiums owed on an option as a condition to trade acceptance. As discussed below, a participant would make premium payment on the day after the option has been accepted for clearance.

[26] As described below in detail, to estimate the maximum amount of liability to which the System could be exposed, Delta would calculate the System's maximum potential exposure (MPSE). To the extent necessary to ensure that MPSE does not exceed its prescribed limit, a participant may be restricted from engaging in opening purchase or opening writing transactions, required to reduce or eliminate existing long or short positions through closing transactions, and required to pay addtional margin.

[27] Each business day, a participant's premium and margin settlement obligations would be netted to produce a single amount owed to or by the participant. By 11:00 a.m. each business day, a participant would be required to wire to SPNTCO in same-day funds any amount owed by that participant, as reflected in daily reports distributed to participants by SPNTCO. By 5:00 p.m. each day, SPNTCO would wire to a participant in same-day funds any such amount owed to the participant by the System. Thus, Delta could delay, until 5:00 p.m., the payment of premiums of excess margin to participants who may be experiencing financial or operational difficulties in connection with exercise settlements.

[28] SPNTCO would accept exercise notices from holders between 9:00 a.m. and 5:00 p.m. daily. These notices would be assigned by SPNTCO by 8:00 a.m. the following day to a writer or seller of the option. As decribed in section 1002 of the System Procedures, these notices would be allocated randomly. System rules require a participant delivering Treasury securities to SPNTCO pursuant to exercise settlement to do so by 12:00 noon on exercise settlement date, against payment by SPNTCO on Delta's behalf. Similarly, a participant receiving Treasury securities pursuant to an exercised or assigned option would be required to do so by a 1:00 p.m. on exercise settlement date, against payment to SPNTCO on behalf of Delta. For Treasury bond and Treasury note options exercised prior to expiration date, the exercise settlement date would be the second business day after an exercise notice was assigned. For Treasury bond and Treasury note options exercised on expiration date, the exercise settlement date would be the third business day following the expiration date. For Treasury bill options, the exercise settlement date would be the Thursday of the week following the week in which the exercise notice was tendered. In order to provide the necessary funds to meet payment obligations to participants delivering securities to Delta, Delta will maintain credit facilities with SPNTCO

[29] The daily position report would detain all option contracts of participant and would show the net daily premium due to or from the participant as a result of those transactions. The daily margin report would detail the amount of margin required on a participant's short positions, while the daily exercise report would reflect exercise notices filed by or assigned to a participant. Those reports would be placed in participants lock boxes maintained on SPNTCO premises by 8:00 a.m. each business day.

[30] The term "clearing agency" is defined, in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or

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guarantor of options traded through the System, falls within the section 3(a)(23) definition of a clearing agency and therefore is required to register with the Commission.

Subparagraphs (A) through (I) of section 17A(b)(3) of the Act set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division's interpretation of subparagraphs (A) through (I).[31] The Commission also notes that in adopting the Government Securities Act of 1986 ("GSA"),[32] Congress stated that,

> In providing for the applicability of the registration and other requirements of Section 17A of the Securities Exchange Act to clearing agencies for government securities, the Commission has broad authority under Section 17A—as well as under Section 23—to take into account the distinctions between membership clearing agencies and proprietary clearing agencies.[33]

Congress further noted that:

> The Commission, under the expanded scope of Section 17A, should recognize distinctions between proprietary and membership clearing agencies, and exercise its discretionary authority to interpret and adapt the requirements of Section 17A, where appropriate, to proprietary clearing agencies for government securities.[34]

III. Discussion

A. Scope of the Order

This Order concerns the registration of Delta as a clearing agency under section 17A of the Act for a period of 36 months. The determinations made in this order reflect a review of: (1) System Procedures; (2) the Operating Agreement; (3) agreements between System operators and System participants; (4) Delta's certificate of incorporation and by-laws; and (5) all other aspects of Delta's operations contained in its application. The Commission expects to review its determinations within 36 months to consider whether to grant Delta permanent registration as a clearing agency. During that time, the Commission will monitor and oversee Delta's operations through review of proposed rule changes,[35] notices to members,[36] and disciplinary actions.[37] The Commission staff has interviewed Delta staff prior to this Order and plans to inspect Delta facilities during the registration period. The Commission also will oversea RMJ as a registered government securities broker under Section 15C of the Act and intends to consult with the FRB and Comptroller who, as noted *infra*, regulate and examine SPNTCO.

B. Capacity to Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. As discussed below, the Commission believes Delta is organized and System Procedures are designed to promote the prompt and accurate clearance and settlement of System transactions.[38] With Delta's registration, OTC Treasury options, for the first time, will be issued, cleared, and settled within a centralized, automated facility subject to Commission oversight.

Market participants trade Treasury options to hedge against or speculate on changes in Treasury security[39] interest rates.[40] Market participants use Treasury options, for example, to hedge long Treasury security portfolios and in effect, to lock in a specific interest rate in anticipation of future borrowing or lending activity. Although Treasury options are listed and traded on registered securities exchanges,[41] many Treasury options are bought and sold on an OTC basis and significant risk transfer activity involving Treasury securities occurs on futures exchanges.[42] The Commission

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both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." *See* 15 U.S.C. 78c(a)(23) (1988).

[31] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as OTC options on Treasury securities. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis.

[32] *See* 132 Cong. Rec. S15790 (October 9, 1986). Prior to the enactment of GSA, government securities were treated as exempted securities for purposes of section 17A, and clearing agencies providing services exclusively for government securities transactions were not required to register with the Commission. Enactment of GSA removed the government securities exception from section 17A, requiring clearing agencies providing services for government securities, such as the Government Securities Clearing Corporation ("GSCC"), to register with the Commission.

[33] *See* 132 Cong. Rec. S15798 (October 9, 1986).

[34] *Id.* Commentators argue that Congress, in adopting GSA, intended to subject Delta to all of the requirements of the Act applicable to registered clearing agencies and for the Commission to grant Delta exemptions from those requirements would contravene Congressional intent. *See* CBT and CME letters. The Commission believes that granting Delta's two exemption requests would not contravene Congressional intent. As noted above, Congress has directed the Commission to recognize the difference between proprietary and membership clearing agencies in applying the requirements of the Act. As noted *infra*, Delta would be subject to all requirements of the Act applicable to registered clearing agencies except in two limited areas [*i.e.*, fair representation in the selection of directors and the filing of certain corporate governance documents pursuant to Section 19(b)] in which the Commission believes Delta's proprietary nature justifies exemption.

[35] Section 19(b) of the Act and Rule 19b–4 thereunder (17 CFR 240.19b–4 (1988) require a registered clearing agency to file with the Commission for review all proposed rule changes, including changes in its by-laws, rules, and procedures.

[36] Rule 17a–22 (17 CFR 240.17a–22 (1988) under section 17(a) of the Act requires a registered clearing agency to file with the Commission, within ten days of release, three copies of any material, including manuals, notices, circulars, bulletins, lists, or periodicals issued or made generally available to its participants or to other entities with whom it has a significant relationship.

[37] Section 19(d) of the Act and Rule 19d–1 thereunder (17 CFR 240.19d–1 (1988) require self-regulatory organizations to file with the Commission notice of: (1) final disciplinary actions; (2) denials; (3) bars; (4) limitations respecting membership, association, participation or access to services; and (5) summary suspensions.

[38] Several commentators suggested that Delta has not demonstrated the operational capacity of SPNTCO, and RMJ. As noted *infra*, the Commission is satisfied that SPNTCO and RMJ can provide the necessary equipment, expertise, and other resources.

[39] The United States Treasury issues book-entry securities in the form of bills, notes, and bonds. Treasury bills are issued in minimum denominations of $10,000 and have original maturities of 3, 6, or 12 months. Treasury notes are issued in denominations of $1,000 or more and have initial maturities from 1 to 10 years. Treasury bonds are issued in denominations of $1,000 or more and have initial maturities of more than 10 years.

[40] Prices of Treasury securities move inversely with changes in interest rates. For example, a 30-year Treasury bond may be issued with an interest rate of 12% of its base price of 100. Investors generally will continue to pay approximately 100 for the bond as long as the interest rate is exactly 12%. However, if Treasury bond interest rates rise to 14%, the price of the bond may decline to 87 to yield 14%. Conversely, if Treasury bond interest rates decline to 10%, the price of the bond may rise to 120 to yield 10%. Given this inverse relationship between prices and interest rates, generally the holder of a call option on a Treasury bond will profit from falling interest rates, while the holder of a put option on a Treasury bond will profit from rising interest rates.

[41] Options on Treasury securities are traded on Amex and the Chicago Board Options Exchange ("CBOE"). *See* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 64323. Futures products on Treasury securities are traded on the CBT, CME, and the Financial Instrument Exchange.

[42] *See* Goodman, *Hedging with Debt Options*, in Handbook of Financial Markets: Securities, Options and Futures, 573 (1986). During 1987, options exchanges traded approximately 233,000 contracts on underlying Treasury securities accounting for an average daily volume of nearly 1,000 contracts representing underlying Treasury security values of

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understands that OTC Treasury options serve a unique role by enabling market participants to tailor option terms (*e.g.*, coupon rate, expiration date, and strike price) to their individual needs.

Treasury securities are auctioned to the public by the Federal Reserve System and are purchased in the primary market by banks and securities firms operating as government securities dealers.[43] Secondary trading in Treasury securities occurs in a decentralized OTC market in which government securities brokers[44] continually disseminate bid and ask quotations through automated communications networks to dealers who trade between themselves on a fully disclosed basis or through brokers on a blind basis. Because government securities dealers have access to current quotes and last sale information for Treasury securities, they stand ready to do a large volume of both puts and calls on those securities.

The current system for the clearance and settlement of OTC Treasury options is decentralized and inefficient in several respects.[45] OTC Treasury options are confirmed via a labor-intensive process in which brokers and dealers exchange confirmation slips, stamp slips containing agreed upon terms, and return stamped slips to each other. This process often results in misplaced confirmation slips and uncompared trades. Premium, margin, and exercise settlement obligations for OTC Treasury options generally are not netted but are deposited piecemeal through clearing agent banks over the automated payment and book-entry custody system ("FedWire") operated by Federal Reserve banks. This process can contribute to demands on liquidity from the banking system, increased FedWire traffic,[46] and increased transaction costs. Those demands and costs might be avoided if a netting process were employed. The OTC Treasury options market currently also lacks sophisticated mechanisms designed to ensure that parties meet their obligations. There is no third-party intermediary such as OCC or a futures clearinghouse guaranteeing the performance of obligations arising under OTC Treasury option contracts[47] and, although these contracts typically provide for the deposit of margin by option sellers, such obligations often are difficult to enforce.

Delta, in conjunction with its facilities manager SPNTCO, would provide a clearance and settlement facility that may alleviate these inefficiencies and that may add greater discipline to transaction processing in this market. System trades would be submitted to SPNTCO for automated confirmation, thereby eliminating transfers of confirmation slips and reducing the likelihood of uncompared trades. Payment obligations for System trades would be netted daily, thereby reducing participant transaction costs and FedWire transfers. The performance of obligations arising under options issued by Delta would be guaranteed by Delta. System participants would be subject to formal margin obligations set by Delta and could be fined, censured, or suspended from the System for a failure to meet those obligations. Furthermore, Delta would have the ability to collect intra-day variation margin from participants and would have access to a $200 million credit enhancement facility designed to help Delta meet its obligations in the event of participant default. Finally, Delta would assess the financial condition of System participants prior to and throughout their participation in the System.

C. Capacity to Safeguard Securities and Funds

As discussed in detail below, the Commission believes Delta has the capacity to safeguard securities and funds, as required by the Act.[48] The Commission bases that determination on: (1) A review of System Procedures and Delta's facilities management arrangements with RMJ, RMJ Securities, and SPNTCO; and (2) representations by Delta's facilities managers regarding their capacity to safeguard securities and funds in the midst of extreme market volume and volatility.

1. Facilities Management, Recordkeeping, and Data Processing

Delta has a facilities management agreement with SPNTCO under which SPNTCO would provide certain clearance and settlement services pursuant to Delta's instructions and in accordance with System Procedures. As noted, those services include: (1) Trade matching and acceptance; (2) participant

approximately $100 million. Futures products overlying Treasury Securities are traded on future exchanges, cleared through clearinghouses associated with those exchanges, and are subject to the jurisdiction of the Commodity Futures Trading Commission. On the Chicago Board of Trade, for example, in 1987 a daily average of over 800,000 futures contracts or futures options on Treasury securities were traded representing underlying Treasury security values of over $80 billion. According to the Federal Reserve Bank of New York ("FRBNY") staff, the average daily value of secondary market trading in Treasury securities is $110 billion. *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639, in which the Commission granted GSCC temporary registration as a clearing agency ("GSCC Registration Order").

[43] There are three types of government securities dealers: Primary, aspiring primary, and non-primary. Primary dealers voluntarily report their positions to the FRBNY and to buy from or sell securities to the FRBNY, among other things, in connection with FRBNY's (as U.S. fiscal agent) open market transactions. Primary dealers are designated by FRBNY based on financial, trading and other criteria. Aspiring primary dealers are firms attempting to demonstrate their capital resources, trading activities, operational experience, and other qualifications to FRBNY to become a primary dealer. Any government securities dealer that is neither a primary or aspiring primary dealer is considered a non-primary dealer. *See, e.g.*, GAO report, *supra*, note 22; GSCC Registration Order, *supra*, note 22.

[44] There are two types of government securities brokers: inter-dealer and retail. Inter-dealer brokers arrange trades only among primary and some aspiring primary dealers, while retail brokers arrange trades among all market participants meeting the brokers credit criteria.

[45] The exchange-listed Treasury securities options market has a centralized, Commission-regulated facility for the issuance, clearance, and settlement of Treasury options. This facility, the Options Clearing Corporation ("OCC"), receives trade data from options exchanges and settles premium payments in same-day funds between writing and purchasing clearing members on the business day after trade date. Upon payment of the premium by the OCC clearing member, OCC "accepts" the trade and becomes guarantor on the transaction, crediting clearing member buyers with long positions and debiting clearing member sellers with short positions on OCC's books and records. OCC collects margin from clearing members with short positions as part of its safeguarding systems to secure its obligations to option holders and can call for the deposit of intra-day variation margin in certain circumstances. OCC randomly assigns to clearing members with short positions exercise notices OCC receives from option holders. OCC nets member payment obligations, which are collected or paid in same-day funds each morning between 10:00 a.m. and 11:00 a.m. (Eastern Standard Time).

[46] Heavy FedWire traffic contributed to delays on the FedWire during October 1987, contributing to the liquidity problems experienced by many firms during that time. *See Report of the Presidential Task Force on Market Mechanisms;* submitted to the President of the United States, the Secretary of the Treasury, and the Chairman of the Federal Reserve Board on January 8, 1988.

[47] Some retail government securities brokers represent that they guarantee the government securities transactions they broker. Nevertheless, the issue of who bears the risk in the event of default in a blind brokered government securities transaction is the subject of some controversy. *See* GAO Report, *supra* note 22.

[48] Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency be organized and that its rules be designed to promote prompt and accurate clearance and settlement of securities for which it is responsible and to safeguard funds and securities in its custody or control or for which it is responsible. The Standards require clearing agencies, such as Delta, that hire facilities managers to perform data or other processing functions to maintain appropriate safeguards to insure the prompt and accurate clearance and settlement of securities transactions. The Standards also require such clearing agencies to assure that their facilities managers will cooperate fully with clearing agency auditors, Commission examiners, independent public accountants, and any other appropriate regulatory agency, to the same extent as a clearing agency which conducts its own processing functions. *See* Standards Release, *supra* note 31.

account maintenance; (3) the collection, transmission, and safeguarding of securities and funds; (4) the preparation and distribution of daily reports; and (5) the collection, assignment, and distribution of exercise notices.

Commentators question SPNTCO's operational capacity to perform the services noted above.[49] SPNTCO represents that its facilities and personnel are adequate to perform those services in accordance with System Procedures, even during periods of extreme market volume and volatility.[50] Based on this representation and SPNTCO's operating history, the Commission believes that SPNTCO has the operational capacity to perform the above services in a manner consistent with System Procedures.

Delta also has a facilities management agreement with RMJ and RMJ Securities. Under that agreement, RMJ would provide the computer software supporting the System, while RMJ Securities would provide the computer hardware, data transmission network, and communication interfaces upon which that software was designed to operate.[51] RMJ represents that the System's computer software and hardware facilities and personnel are adequate to support the System in accordance with System Procedures.[52]

Delta, SPNTCO, RMJ, and RMJ Securities would be subject to substantial review regarding their ability to perform their respective System functions. First the internal accounting departments of each entity review the adequacy of their respective systems and controls and report the results of their review to their respective Board of Directors. Second, as noted *infra*, internal accounting controls related to Delta and the issuance, clearance, and settlement of System transactions would be reviewed annually by an independent public accountant in accordance with Division Standards. RMJ and RMJ Securities also would have independent auditors review their systems of internal accounting controls.[53] Third, each entity would be subject to substantial federal regulation. Delta, as a registered clearing agency, would be subject to Commission oversight as described in Section 17A of the Act and rules thereunder. RMJ and RMJ Securities, as registered government securities brokers under the Act,[54] would be required to file annually with the Commission audited financial statements prepared by an independent public accountant and would be subject to periodic Commission examinations.[55] SPNTCO, as a National Bank and member of the Federal Reserve System, is regulated and examined by the Comptroller and FRB.

Commentators argue that SPNTCO also should be subject to clearing agency registration requirements.[56] Specifically, they believe that services provided by SPNTCO to Delta constitute clearing agency activities as defined in section 3(A)(23) of the Act and, therefore, trigger registration under section 17A. Commentators argue that excluding SPNTCO from clearing agency registration would preclude Commission oversight of SPNTCO's System activities and encourage other clearing agencies to use facilities management arrangements to avoid Commission regulation.

As noted above, SPNTCO would perform a variety of System functions for Delta under a facilities management contract. The Commission recognizes that SPNTCO would perform a broad range of significant functions including receipt, delivery, and safekeeping of securities and funds; [57] trade matching; monitoring of trading and position limits; acceptance of options; exercise processing; and report preparation and distribution.

The Commission does not believe at this time that the requirements and purposes of section 17A of the Act require SPNTCO to register with the Commission as a clearing agency. Clearing agencies registered with the Commission [58] historically have contracted with third parties in order to provide a variety of clearing agency services.[59] The Commission's experience with those arrangements is that the Commission can carry out its clearing agency oversight responsibilities through its jurisdiction over the registered clearing agency. Facilities managers cannot, for example, unilaterally make system changes that would alter the rules of the clearing agency (or the rights and obligations of clearing agency participants)[60] without

[49] *See* OCC letters.

[50] *See* letter from Tom Ford, SPNTCO, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988.

[51] RMJ Securities maintains in New York City a primary data center as well as a back-up data center that provides short and long-term disaster recovery capabilities. Both facilities utilize 24-hour guard service, continuous videotape surveillance, and alarm service at all points of entry. Both facilities also employ uninterruptible power supplies and extensive fire prevention measures.

[52] *See* letter from Steven Lynner, Managing Director, RMJ, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988.

[53] *See* 52 FR 27910 (July 24, 1987) and Rule 17a–5 under the Act.

[54] Under section 15c of the Act [15 U.S.C. 78o–5(1988)], government securities brokers and dealers are required to register with the Commission and meet other requirements applicable to Commission-registered brokers and dealers.

[55] *See* section 15C(d)(1) of the Act.

[56] *See* CBT, OCC letters.

[57] Commentators do not appear to suggest that these specific functions should require SPNTCO to register as a clearing agency. All registered clearing agencies use arrangements with banks, among other things, to effect money settlement, to deliver and receive securities over Fedwire, or for custody services. To the extent those bank services fall within the section 3(a)(23)(A) definition of clearing agency, the Commission believes that those activities generally are excluded from the definition of clearing agency under section 3(a)(23)(B) as customary banking activities.

[58] Delta's application raises the question of SPNTCO's registration as a clearing agency by virtue of its relationship with Delta and, thus, this Order does not address whether SPNTCO's System activities in the absence of a contractual relationship with a registered clearing agency would require clearing agency registration under section 17A of the Act.

[59] The Midwest Securities Trust Company ("MSTC"), for example, operates a Depository Satellite System under which MSTC contracts with third parties to act as subcustodians for bearer-form municipal bonds, including Security Pacific Clearing Services Corporation and Security Pacific National Bank as sub-custodians. *See, e.g.*, Securities Exchange Act Release No. 12077 (February 6, 1976). The Intermarket Clearing Corporation ("ICC") has a facilities management contract with OCC under which OCC performs the bulk of ICC's clearing services. *See* Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556. A similar arrangement exists between the Government Securities Clearing Corporation and the National Securities Clearing Corporation ("NSCC"). *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. NSCC uses the Securities Industry Automation Corporation ("SIAC") as a facilities manager to perform certain comprehensive processing functions. *See, e.g.*, Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916. The MBS Clearing Corporation ("MBSCC") began operations with facilities management arrangements with Midwest Clearing Corporation and Chemical Bank, which included comprehensive computer hardware and software services, operating premises, and personnel. *See* Securities, Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218. *See also* File No. 600–24, under which the Clearing Corporation for Options and Securities ("CCOS"), a subsidiary of the Chicago Board of Trade Clearing Corporation ("CBTCC"), seeks registration as a clearing agency including a facilities management arrangement whereby CBTCC would perform the bulk of CCOS's processing functions.

[60] *See* section 19(b) and Rule 19b–4. Those provisions define "rules of a clearing agency" broadly to include virtually all material aspects of clearing agency operations, including by-laws, procedures, services, actions that affect the rights and obligations of the clearing agency or its members, and actions that affect a clearing agency's safeguarding of securities and funds. Indeed, section 19(b) of the Act provides that rules of a self-regulatory organization cannot be effective unless filed in accordance with the Act. *See* Securities Exchange Act Release No. 24429 (May 6, 1987), in which the Commission rendered a decision that a New York Stock Exchange unwritten policy prohibiting members from installing phone links to communicate with customers located off the floor had to be filed with the Commission under Section 19(b) to be effective.

having those changes filed by the clearing agency with the Commission under section 19 of the Act.[61] The Commission also can access any documentation or information held by facilities managers through its jurisdiction over the registered clearing agency.[62] To the extent that the Commission needs access to a facilities manager's premises or personnel, the Commission expects, and has found, clearing agencies and facilities managers to be cooperative with Commission staff.[63]

The Commission intends to monitor closely the arrangements among Delta, SPNTCO, and RMJ and Delta's compliance with the requirements of the Act. To the extent any actions by entities involved in the System create non-compliance with the Act or impair the Commission's oversight responsibilities, the Commission believes that the Act authorizes, and the Commission would promptly take, appropriate action.

The Commission emphasizes the unique and critical role that certain facilities managers provide to self-regulatory organizations ("SROs"). Facilities managers, for example, may provide the core personnel and equipment necessary for SRO operations. Under those circumstances, the facilities manager is, in effect, through its relationship with the SRO, also responsible for the SRO's satisfaction of its responsibilities under the Act. Moreover, the Commission relies on the SRO and the facilities manager in carrying out its responsibilities under the Act. For those reasons, the Commission reiterates its willingness to take any appropriate action under the Act in response to activities of facilities managers.[64]

2. Internal Accounting Controls

The Standards require a clearing agency to furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting controls for the period since the last such report.[65] The scope of the study and evaluation would include all clearing agency activities performed for participants, particularly trade recording, transaction processing, and depository activities.[66]

To opine with respect to a clearing agency's system of internal accounting control, the independent accountant would be required to comply with general standards established by the American Institute of Certified Public Accountants ("AICPA").[67] Under AICPA Statement on Auditing Standards ("SAS") No. 30, the independent accountant's report must, among other things, describe any material weaknesses [68] in the clearing agency's system of internal accounting controls and any corrective action taken or proposed to be taken. SAS No. 30 also advises the independent accountant to consider issuing a qualified opinion if the entity being reviewed has placed any significant limitations on the scope of the accountant's review.[69]

One commenter expressed concern that internal accounting controls applicable to functions performed by Delta through SPNTCO would not be subject to an independent public accountant review consistent with Division Standards.[70] The Commission disagrees and believes that an independent accountant review of Delta's internal accounting controls would include a review of internal accounting controls applicable to services provided to Delta by its facilities managers, including SPNTCO. First, standards exist to guide accountants who undertake to review Delta's system of internal accounting control.[71] Second, Delta's independent auditor would consult with SPNTCO's auditors (independent or otherwise) in reviewing internal accounting controls applicable to services provided by SPNTCO.[72] Finally, as described above, SAS No. 30 dictates that an accountant can express an unqualified opinion on an entity's system of internal accounting control only if the accountant has been able to apply all the procedures he considers necessary in the circumstances.[73]

3. Financial Risk Management

The Commission believes System Procedures are designed appropriately to protect System participants and Delta against financial loss associated with System services. The principal source of financial risk to Delta and System participants is that participants may default on their obligations to Delta, for example, because of financial insolvency. Delta safeguards against these risks include participation standards, monitoring member financial condition, trading and position limits, MPSE limits, daily margin requirements, a credit enhancement facility, and specific procedures for handling the obligations of a defaulting member.[74]

An Executive Committee of Delta's Board of Directors would determine whether or not an entity should be admitted as a System participant based on the following criteria.[75] Entities

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[61] The Commission is not aware of any such action that was not filed as a rule change under section 19(b). If the Commission were faced with those circumstances, the Commission, or other appropriate regulatory agency, would have authority under section 19(h) of the Act to take action against the registered clearing agency.

[62] Specified information and documentation must be maintained by a registered clearing agency and made available to Commission staff. *See, e.g.*, Rule 17a–1 under the Act. *See* the Operating Agreement, Sections 2.7, 4.2, and 4.7 for provisions dealing with report and recordkeeping responsibilities of Delta, SPNTCO, and RMJ. Nevertheless, RMJ, RMJ Securities, and SPNTCO have agreed to provide access to all records and staff as the Commission deems necessary to oversee Delta's financial and operational condition.

[63] Because of that favorable experience and the Commission's authority under section 19(h) of the Act, the Commission generally has not required that facilities management contracts specifically grant the Commission unlimited access to a facilities manager's premises. If the Commission perceived a need for express authority for such access, it could formulate an appropriate rule under section 17A (b) and (d) of the Act.

[64] Depending on the circumstances and if necessary, the Commission would consider, among other things, suspending or revoking the SRO's registration, imposing limitations on the SRO's activity, and censuring or removing from office officers or directors of the SRO. *See, e.g.*, section 19(h) of the Act.

[65] The Standards propose the annual "for-the-period" requirement to provide a very high degree of assurance to participants and the Commission concerning the safety of overall clearing agency operations. *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 5167 ["Full Registration Order"].

[66] *Id.*

[67] *Id.*

[68] According to the Standards Release, a material weakness in internal accounting control in a clearing agency includes, among other things, any conditions individually, or taken as a whole, which could reasonably be expected to: (1) Inhibit a clearing agency from promptly and accurately completing securities transactions or promptly discharging its responsibilities to its participants, other clearing agencies, debtors or creditors; (2) result in material financial loss to the clearing agency or other clearing agencies; (3) result in a material charge to the clearing agency participants' fund resulting from other than the default of a participant; (4) result in material misstatements in the clearing agency's financial statements; or (5) result in inaccurate books and records maintained by the clearing agency to an extent that could reasonably be expected to result in the conditions described in (1)–(4) above. *See*, Standards Release, *supra*, note 31, at note 50.

[69] *See* SAS No. 30 at paragraph 44.

[70] *See* OCC letters.

[71] *See* SAS No. 30, 44 and Standards Release, *supra*, note 31.

[72] *See, generally*, SAS No. 44.

[73] *See*, SAS No. 30, at paragraph 44.

[74] Delta's safeguards do not include a clearing or participants fund. *See* discussion *infra*.

[75] One commentator (*see* CBT letters) is concerned that Delta may admit participants that would have an unfair advantage in their use of the System because of their relationship to Delta or its facilities managers. The Commission believes, however, that specific provisions concerning confidentiality of System information contained in

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designated by FRBNY as primary dealers would be eligible for participation. Entities not designated as such would be eligible if: (1) They are registered with the Commission as brokers or dealers and have a minimum net capital of $25 million, as calculated in accordance with the Commission's net capital rule;[78] or (2) they are registered with the Commission as government securities brokers or dealers and have a minimum net capital of $25 million, as calculated in accordance with net capital rules promulgated by the Department of the Treasury;[77] or (3) they are commercial banks or insurance companies having a total equity capitalization of at least $500 million; or (4) they do not fall within the categories described above but meet minimum net capital requirements determined by Delta on an individual basis.[78] To be eligible for participation, entities also must intend to engage in significant trading of Treasury options and must maintain facilities and personnel adequate for the expeditious and orderly transaction of business within the System.[79]

Once admitted, participants must continue to meet the requirements described above and must submit to Delta annual audited financial statements and quarterly unaudited financial statements.[80] If a participant fails to meet these requirements, Delta may censure, suspend, or expel the participant, as well as limit the activities, functions, or operations of the participant.

Delta would impose a limit on the aggregate margin obligations of each participant (*i.e.*, a trading limit) upon admission to the System. This limit would be based upon the financial capacity of the participant as determined by Delta credit analysts.[81] Delta also would impose limits on a participant's aggregate long or short positions (*i.e.*, position limits) if the condition of the market or the financial or operational condition of a participant made such necessary or advisable for the protection of Delta or System participants. In imposing position limits, Delta could restrict a participant from buying any opening purchase transaction and/or writing any opening writing transaction or require a participant to reduce or eliminate existing long or short positions through closing transactions. As noted, neither Delta nor SPNTCO would accept a trade exceeding a participant's trading or position limits.

System participants would be required to deposit margin daily to secure obligations arising under Treasury options written by them.[82] The amount of margin required would be derived from two calculations: "mark-to-market" margin and "performance" margin.[83] Mark-to-market margin represents an estimate of current options prices, based upon current implied volatilities of options traded within the System,[84] and the resulting current estimated cost to liquidate a participant's options portfolio, *i.e.*, short positions offset by the estimated proceeds from liquidation of its long positions.[85] Performance margin represents the difference between today's mark-to-market values and the estimated liquidation value of the participant's positions the next business day [86] using predicted market movement for the next business day based on historical volatilities.[87] In estimating the next-day liquidation value of a participant's positions, Delta would assume a three standard deviation overnight move up and down in the value of the Treasury securities underlying those positions.[88] Delta would reprice options based upon the mark-to-market values and the three standard deviation move in the market. The worst case change in the value of a participant's positions resulting from these calculations would be the performance margin requirement. Delta will monitor intra-day exposure and, under its rules, could require

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the Operating Agreement and Delta's procedures address those concerns. *See, e.g.*, section 306 of Delta's procedures. Commentators also argue that concerns over potential antitrust liability may induce Delta to admit questionable applicants or refuse to discipline participants violating System Procedures (*see* CBT letters). The Commission believes that this argument is based on speculation as to future Delta activities and whether or not those activities would result in antitrust liability. *See, generally, Gordon* v. *New York Stock Exchange*, 422 U.S. 659 (1975). Moreover, the Commission will continue to oversee Delta activities and respond appropriately to any Delta actions that appear to be inconsistent with the Act.

[76] *See* 17 CFR 240.15c3–1.

[77] The Department of the Treasury has issued financial responsibility rules, including minimum net capital requirements, for government securities brokers and dealers that are not subject to the Commission's net capital rule. *See* 52 FR 27910 (July 24, 1987).

[78] One commentator suggested that provisions in Delta's procedures authorizing Delta to waive participation criteria are inappropriate. The Commission, however, believes that flexibility provided by such provisions enable a clearing agency to respond to unusual or unanticipated circumstances while maintaining prudent standards. The Commission will oversee Delta and respond appropriately in the event Delta administers such waiver provisions in a manner inconsistent with the Act.

[79] Several commentators (*see, e.g.*, CBT letters, CME letter) suggest that Delta's role in approving applications for Delta membership inappropriately determines whether an applicant can access RMJ's brokerage services for Treasury options. Those commentators cite section 17A(b)(2)(F), which generally provides that the rules of a clearing agency not be designed "to regulate by virtue of any authority conferred by this title matters not related to the purposes of [Section 17A] or the administration of the clearing agency." The Commission believes, however, that Delta's admission standards and decisions would be fundamental credit decisions that necessarily must be made by all clearing agencies as part of the safeguarding of securities and funds and administration of the affairs of the clearing agency. Accordingly, the Commission does not believe that those aspects of Delta's operations are designed to regulate matters unrelated to the purposes of section 17A or the administration of Delta.

[80] System participants also have a continuing obligation to: (1) Maintain books and records in accordance with System procedures and, if applicable, Commission rules; (2) employ personnel and utilize procedures sufficient to discharge their responsibilities in accordance with System procedures; (3) not be subject to or be associated with persons subject to a statutory disqualification as defined in section 3(a)(39) of the Act; (4) not engage in or be associated with anyone engaged in acts inconsistent with just and equitable principles of trade; and (5) have substantial experience training Treasury options or employ personnel with such experience.

[81] Specifically, Delta credit analysts would look at a participant's balance sheet strengths and weaknesses, amount and trend of earnings, ownership, availability and structure of capital, vulnerability to changes in interest rates, and liquidity of assets.

[82] Margin would be deposited only in the form of Federal Reserve funds. In accordance with Delta's instructions, SPNTCO or its affiliate would invest margin payments in overnight repurchase agreements requiring as collateral the delivery of Treasury bills with maturities not to exceed 180 days from the date of such repurchase agreements.

[83] Delta would calculate mark-to-the market and performance margin on each option position. In calculating performance margin, Delta will group options into five sectors based on the length to maturity of the underlying securities. Delta then nets performance margin (debits or zero) for all sectors; and combines performance margin with the total mark-to market margin to generate the participant's margin obligation.

[84] Delta would use implied volatilities generated by The Option Group ("TOG") pricing model, which the Commission understands is utilized by a significant number of primary government securities dealers. Delta would use implied volatilities to price options because individual OTC Treasury options would not necessarily trade regularly and last-sale prices would not be available.

[85] For margin calculation purposes, Delta would obtain information on the prices of underlying Treasury securities by 3:00 p.m. daily from its price vendor, Interactive Data Services Incorporated ("IDSI"). If, after 3:00 p.m., the market moves significantly, Delta would substitute for those prices 5:00 p.m. prices obtained from two participant dealers selected at random.

[86] Performance margin also would be calculated using the TOG pricing model. RMJ would provide the software and data processing for the model. Margin parameters for options priced by the model would be established by Delta.

[87] Delta would use a 100-day moving average based upon price observations of underlying Treasury securities during the immediately prior 100 days.

[88] Delta states in its application that a three standard deviation confidence interval provides a 99.1% level of confidence (*i.e.*, 99.1% of all price changes should fall within that interval).

participants to deposit additional margin at any time during the business day if it deems such action necessary or advisable for the protection of Delta or System participants.

Delta would obtain and maintain a $200 million credit enhancement facility designed to ensure that Delta would be able to satisfy its obligations if margin deposits were insufficient to cover a default. Security Pacific National Bank ("SPNB") has agreed to issue, for the benefit of Delta, a letter of credit in the amount of $100 million.[89] If a participant defaults, and Delta's default procedures do not produce funds sufficient to cover that participant's obligations, Delta would draw on the letter of credit to cover those obligations.[90] Should the letter of credit amount be insufficient to cover a participant default, Delta could draw on a $100 milion surety bond [91] issued by Capital Markets Assurance Corporation ("CapMAC").[92]

Each participant must be accepted by SPNB as an account party on the letter of credit and must be accepted by CapMAC as an insured party under the surety bond.[93] Furthermore, each participant must reimburse SPNB and CapMAC for any draws made on the letter of credit or surety bond because of that participant's default. SPNB would bear the risk of loss for all reimbursed draws under the letter of credit up to $50 million. Loss from unreimbursed draws under the letter of credit in excess of $50 million would be borne by both SPNB and Delta, and all unreimbursed draws under the surety bond would be borne by both CapMAC and Delta.[94]

The amount available to be paid to Delta pursuant to the credit enhancement facility would at all times equal at least three times MPSE. MPSE would equal (1) the exposure of all participant short positions adjusted to reflect a six standard deviation [95] move in the price of Treasury securities underlying those positions, less the sum of (2) the value of all participant long positions adjusted to reflect the same movement, the amount of margin on deposit from all participants, and the amount of margin due from all participants at or before the immediately succeeding settlement time. At the close of each business day, MPSE would be calculated for the entire System and for each participant. To ensure that the credit enhancement facility exceeds at least three times MPSE, Delta would be permitted to impose position limits on participants.

Accordingly to one commentator,[96] CapMAC and SPNB perform functions that should require them to register as clearing agencies. Specifically, the commentator believes that SPNB and CapMAC would have the authority to (1) make admission or suspension decisions, (2) approve or disapprove Delta's proposed rule changes, (3) monitor participant compliance with System Procedures, and (4) require participants to post additional margin.

The Commission believes that for the following reasons the above characterizations are inaccurate. First, although participant admission and continued participation in the System are contingent upon being an account party on SPNB's letter of credit and an insured party under CapMAC's surety bond, any denial of admission or suspension for a failure to meet that criteria would be made by Delta, not CapMAC or SPNB. Second, although Delta has agreed not to amend System Procedures in a manner adversely affecting the credit enhancement facility without the facility's consent,[97] SPNB and CapMAC would not have the authority, generally, to approve or disapprove Delta's proposed rule changes. Third, although SPNB and CapMAC may monitor the financial condition of a participant to determine whether or not it should remain an account party on the letter of credit or an insured party under the surety bond, they would not monitor participant compliance with System Procedures. Also, it is legitimate to look to credit evaluations by third parties in making credit decisions, without thereby rendering those parties "clearing agencies" who must also register under section 17A of the Act. Finally, although CapMAC and SPNB may request that Delta impose intra-day variation margin requirements upon participants, they have no right to require participants to post margin.

The Commission does not believe that the rights of CapMAC and SPNB described above trigger the section 17A clearing agency registration requirement.[98] The Commission, however, intends to monitor closely arrangements among Delta, SPNB, and CapMAC, and Delta's compliance with the requirements of the Act. To the extent any actions by those entities create noncompliance with the Act or impair the Commission's oversight responsibilities, the Commission believes that the Act authorizes, and the Commission promptly would take, appropriate action.[99]

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[89] SPNB, a subsidiary of Security Pacific Corporation, is the eighth largest commercial bank in the United States with reported assets of approximately $47.2 billion.

[90] To make a draw on the letter of credit, Delta would present to SPNB a sight draft and a certificate for payment. If these documents are presented in conformity with the letter of credit prior to 2:00 p.m. (all times refer to Eastern Standard Time) on a particular business day, SPNB would honor the demand in accordance with Delta's payment instructions by 3:00 p.m. on the same business day. If a demand is made after 2:00 p.m., SPNB would honor the demand by 2:00 p.m. the following business day.

[91] The maximum coverage for any participant under the surety bond would be $20 million.

[92] CapMAC is a wholly-owned subsidiary of Citibank (New York State) engaged in the business of financial guarantee and surety insurance. If CapMAC receives Delta's demand for payment in conformity with the terms of the surety bond, at or prior to 2:00 p.m. (all times refer to Eastern Time) on a particular business day, CapMAC would make funds available to Delta in accordance with its payment instructions by 3:00 p.m. that same business day. If a demand is made after 2:00 p.m., CapMAC would make funds available to Delta by 2:00 p.m. the next business day.

[93] If a participant is terminated as an account party on the letter of credit or as an insured party under the surety bond, it would be suspended from the System.

[94] Delta's proportionate share of the unreimbursed draws shall be determined by multiplying the amount of the unreimbursed draws under the letter of credit in excess of $50 million or the amount of the unreimbursed payments under the surety bond, as the case may be, by a fraction, the numerator of which equals $5 million and the denominator of which equals the aggregate face amount of the credit enhancement facility minus $45 million. Accordingly, assuming the amount of unreimbursed draws under the letter of credit is $75 million, Delta's proportionate share of the loss in excess of the $50 million limit would be 81%: $25 million (amount of unreimbursed draws in excess of $50 million) × $5 million/$155 million

[95] The standard deviation would be derived from the greater of (1) the average market price, based on trading prices during a period of 100 consecutive trading days ending on February 19, 1980, (the period of highest volatility in Treasury securities prices in recent history) of Treasury securities which are equivalent to Treasury securities underlying such short positions or (2) the average market price of similar Treasury securities during any subsequent period of 100 consecutive trading days (a period of even higher volatility).

[96] *See* CBT letters.

[97] This condition is similar to that contained in Section 4.5 of the Credit and Security Agreement between OCC and Citibank N.A., in which Citibank N.A. has the right to review proposed rule changes filed by OCC with the Commission. *See* File No. SR–OCC–86–25 (Exhibit 1).

[98] SPNB and CapMAC's role in the Delta System may be analogous, in some respects, to the role of settlement banks in The Depository Trust Company's ("DTC") same-day funds settlement system. DTC's rules for the same-day funds settlement system require banks acting as settlement agents for DTC participants using that system to establish a maximum credit limit for their client DTC participants. *See* Securities Exchange Act Release No. 26051 (August 31, 1988), 53 FR 34853.

[99] As previously noted, depending on the circumstances, and if necessary, the Commission would consider, among other things, suspending or revoking Delta's registration, imposing limitations on Delta's activity, and censuring or removing from office officers and directors of Delta. *See, e.g.*, section 19(h) of the Act.

Delta may suspend summarily any participant that defaults on its System obligations.[100] Upon suspension, a participant would no longer be permitted to trade through the System, and Delta would place all margin and other property deposited by such participant in a liquidating settlement account ("LSA"). Pending transactions of a suspended participant (*i.e.*, transactions where acceptance by SPNTCO is pending at the time of suspension) would be rejected by SPNTCO, and Delta would close out that participant's long positions, short positions, and exercised options.[101] Proceeds from the closing of all long positions and exercised options would be credited to LSA, while expenses incurred in closing short positions and exercised options would be charged to LSA.[102] If the cost of liquidating a suspended participant's positions exceeds the amount available in LSA, Delta would make a draw on the credit enhancement facility in the manner previously described.[103]

The Commission notes that Delta's clearing system does not include a clearing fund as contemplated by the Standards Release.[104] The Commission also notes that Delta's system represents the first Commission-approved clearing system that does not mutualize risk among clearing agency participants.[105] Although other clearing agencies registered with the Commission employ some form of risk mutualization, the Commission does not believe that risk mutualization is mandated by the provisions of the Act. Risk mutualization has certain benefits, including the provision of liquidity from within the clearing agency environment that otherwise must be provided by outside sources. The Commission will examine each clearing agency applicant on a case-by-case basis to determine whether its risk management procedures are appropriately tailored to the markets served by the clearing agency and otherwise satisfy the requirements of the Act.

The Commission believes at this time that Delta's credit analysis, participant monitoring, margin requirements, credit enhancement facilities, and system debit caps [106] implemented through MPSE limits [107] provide sufficient safeguards and liquidity for the Commission to conclude that Delta's system should be permitted to begin operations. In the event of an unanticipated default, Delta will reply initially on the defaulting participant's margin deposits and then access Delta's credit enhancement facilities for up to $200 million. The Commission believes that margin requirements for derivative product clearing systems function in a manner similar to clearing fund contributions for stock clearing systems.[108]

The commentator [109] expressed concern about Delta's plan to admit federally-insured commercial banks as participants in Delta's options system. This commentator noted that a commercial bank insolvency would be governed by federal or state banking laws, rather than the Bankruptcy Reform Act of 1978 ("Code") as amended. Thus, according to this commentator, Delta may not have certain protections against bank member insolvency because it cannot benefit from recent amendments to the Code clarifying the right of clearing agencies to close out open obligations of insolvent clearing members and to apply margin payments consistent with statutory provisions concerning automatic stays, voidable preferences and fraudulent transfers.[110]

The Commission believes that Delta has taken appropriate precautions to protect against losses resulting from a participating bank's insolvency. First, Delta will maintain a lien over all options in participant accounts, as well as assets participants deposit to meet Delta's margin requirements, and expects to meet all state commercial law requirements necessary for a perfected security interest in those assets.[111]

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[100] Under System procedures, summary suspension is mandatory if a participant has committed a premium, margin, payment, or delivery default, provided that such suspension may be deferred (1) not more than two hours in the event of a premium or margin default, and (2) not more than 24 hours in the event of a delivery or payment default. Delta, in its discretion, may suspend a participant that: (1) Is in financial or operating difficulty; (2) is insolvent; (3) has been suspended by a self-regulatory organization; or (4) is the subject of an order withdrawing, suspending, or revoking any license, membership, or other qualification necessary to do business.

[101] Under System procedures, Delta may liquidate a defaulting participant's positions selectively or may offer the whole position, inclusive of all outstanding option series, to a limited number of participants for competitive bidding. The participant offering the lowest net liquidation cost to Delta would assume the entire position.

[102] If a suspended participant has failed to deliver securities pursuant to its exercise settlement obligations, Delta would buy-in Treasury securities for the account and liability of the defaulting participant, using LSA funds for such buy-in. If a suspended participant has failed to receive and pay for securities pursuant to its exercise settlement obligations, Delta would sell the securities tendered by the delivering participant and pay the delivering participant with the proceeds from that sale and any additional amount that must be withdrawn from LSA to meet the defaulting participant's obligations.

[103] Within one hour of being notified of suspension, a participant would be required to pay the debt balance in LSA resulting from the liquidation of the participant's positions and exercised option contracts.

[104] The Standards state that "[t]he Divison believes that it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject." *See* Standards Release, 20 SEC Docket at 432. Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants.

[105] *But see* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218, concerning temporary registration of the MBS Clearing Corporation ("MBSCC") as a clearing agency. MBSCC's risk management system employs a limited mutualization of risk among participants by limiting its ultimate capability to assess participants to those participants that had MBSCC transactions with a defaulting participant.

[106] Delta's MPSE caps distinguish its system from stock and option clearing systems operated by NSCC and OCC where the clearing agencies must guarantee the settlement of virtually unlimited trading activity.

[107] Delta also would apply a limit on the amount of risk each participant could pose to the System by limiting the amount of margin each participant posts with the System. Delta would not accept transactions that would exceed that limit and, to the extent market movements create exposure from a participant that exceeds its limit, Delta would require the participant to enter closing transactions that would reduce margin to below the participant's limit.

[108] OCC, for example, relies heavily on its margin system as a primary risk management procedure, supplemented by a clearing fund. OCC, however, does not maintain credit enhancement facilities such as those employed by Delta. Moreover, Delta does not mutualize default risk among all participants through participant assessment capability as do OCC and National Securities Clearing Corporation. In the Delta system, like OCC's system, margin deposits on an individual participant are available only in the event that participant defaults.

[109] *See* OCC letters.

[110] In support of these concerns, the commentator cited *Brill v. Citizens Trust Co.*, 492 A.2d 1215 (R.I. 1985), which apparently precluded a post-petition bank acceleration of an unmatured, unsecured obligation involving a non-bank debtor. Although not dispositive of these concerns, the Commission notes that *Brill* may be distinguishable from the kind of case that might result from Delta's decision to admit commercial banks as participants. Among other things, the bank in *Brill* was an unsecured creditor. As discussed below, Delta will maintain appropriate liens, and will perfect its security interest in margin, long options issued to its members, and other assets held on behalf of its members.

[111] Delta expects its options will be treated as uncertificated securities under the New York Uniform Commercial Code. *See* N.Y. U.C.C. 8–102 (McKinney 1988). Under New York law, acceptable methods of perfecting a security interest in uncertificated securities include making appropriate entries on the books of a clearing corporation or registering the security interest on the books of the issuer. *See id.*, UCC 8–320, 8–313. These methods may not be sufficient to obtain a perfected security interest in all states, however, because some state commercial laws treat uncertificated securities as "general intangibles," and require creditors to file financing statements at central offices to "perfect" security interests against the claims of other creditors. Delta has represented that it will take all reasonable steps necessary to assure it maintains a perfected security interest in assets securing participant payment obligations.

Second, Delta's rules concerning the close-out of open positions in the event of participant default appear to satisfy commercial law standards for reasonable disposition of assets. Third, the close-out of a defaulting participant's open options position would appear to satisfy the requirements for debtor set-off under federal banking law applicable to national bank insolvencies.[112] Finally, Delta expects to monitor participant financial condition closely, with the expectation that any action necessary to address member financial or operational difficulties could be taken in advance of formal insolvency or receivership proceedings.

4. Standard of Care

The Commission believes that clearing agencies should perform their functions under a high standard of care, and at a minimum perform custody functions under an ordinary negligence standard of care.[113] Delta and its facilities managers would perform their System functions under an ordinary negligence standard of care, with Delta assuming liability for a breach of that standard by any of those entities.[114] Delta would be able to seek indemnification or contribution from its facilities managers for their role in a standard-of-care breach.[115]

The Standards Release provides that the rules of a clearing agency, subject to several exceptions, must require the clearing agency to promptly deliver securities in its custody or control to, or as directed by, the Participant for whom they are held.[116] The Standards except from that requirement securities delivered against payment (for which the Participant has not made payment) and securities pledged by the Participant through the clearing agency. The Standards Release also requires that a clearing agency's rules and agreements enable broker-dealers to comply with applicable provisions of the Act and related Commission rules concerning protection of customer assets, such as sections 8 and 15 of the Act and Rules 8c–1, 15c2–1, and 15c3–3 under the Act.

In this regard, the Commission notes that the System was designed for proprietary activity and that Delta would maintain liens over all Delta-issued options. Thus, Delta's procedures do not provide for lien-free accounts to enable participants to comply with the Commission's customer protection rules. Delta's rules accordingly specifically prohibit its participants from using the System to establish or maintain customer positions in Delta-issued options.

The Commission believes that the proprietary nature of the System and Delta's rules that prohibit customer-related activity indicate that those provisions of the Standard Release concerning customer protection procedures should not be applied to Delta. The Commission, however, emphasizes that Delta is obligated by the Act to enforce all of its rules, including the rule requiring System users to limit their activity to proprietary trading.

D. Other Determinations

1. Capacity to Comply With the Act and Enforce Compliance by Members and Participants

Section 17A(b)(3)(A) of the Act requires that Delta have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require Delta to keep and preserve certain records,[117] obtain and retain fingerprints from personnel,[118] and register and participate in the Commission's Lost and Stolen Securities Program.[119] Based upon a review of System Procedures and Delta's facilities management arrangements, the Commission believes Delta has the capacity to comply with the Act and rules thereunder.

Commentators argue that Delta's registration would contravene that portion of section 17A(B)(3)(A) requiring a registered clearing agency to be organized and have the capacity to comply with the Act.[120] Specifically, they argue that the System would operate as an unregistered exchange in violation of sections 5 and 6 of the Act, and that Delta would be an aider and abettor to those violations. As noted above, the Division believes that, at this time, the System is not required to register as an exchange.[121] Based upon that determination, the Commission believes Delta's role in the formation and administration of the System will not impair Delta's capacity to comply with the Act.

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[112] National bank insolvencies are governed by federal banking law. *See* 12 U.S.C. 91, 94. The allowance of claims against the assets of an insolvent national bank is a matter of federal law. *See, e.g., FDIC v. Mademoiselle of California*, 379 F.2d 660, 662 (9th Cir. 1967). The validity of setoff claims must comport with federal law, although courts have at times looked to state law for guiding principles. *See Interfirst Bank Abilene v. Federal Deposit Insurance Corporation*, 777 F.2d 1092, 1094 (5th Cir. 1985). Courts have looked to "general equitable doctrines," and state law for principles underlying the right of setoff. *See FDIC v. Liberty Nat. Bank & Trust Co.*, 806 F.2d 961 (10th Cir. 1986). Among the states recognizing set-off rights are California, New York, Oklahoma and Pennsylvania. *See, e.g., Yardley v. Philler*, 167 U.S. 344 (1896) (PA); 806 F.2d 961 (OK); 379 F.2d 660 (CA); *Savings Bank of Rockland Conty v. FDIC*, 668 F.Supp. 799 (S.D.N.Y. 1987) (NY).

Although the ability to setoff claims against an insolvent participant likely will depend on the particular circumstances surrounding that insolvency, Delta appears justified in its reliance on an ability to setoff its claims against a participant as one of many protections against financial loss associated with accepting national banks as participants. Courts generally have held that if a setoff is otherwise valid, it is not a preference in violation of the National Bank Act. *See, e.g., Scott v. Armstrong*, 146 U.S. 499 (1892); 777 F.2d 1092, 1094. Courts have allowed clearing houses to setoff claims against insolvent member banks, and have allowed banks to collect on, and otherwise setoff deposits against, letters of credit issued by national banks later determined to be insolvent. *See e.g., Yardley v. Philler*, 167 U.S. 344 *1896); *FDIC v. Liberty Nat'l Bank & Trust Co.*, 806 F.2d 961.

[113] *See* Standards Release, Full Registration Order; Securities Exchange Act Release Nos. 24046 (February 5, 1987), 52 FR 4218; 25740 (May 24, 1988), 53 FR 19639; and 26154 (October 3, 1988), 53 FR 39556. The Commission also believes that a lower standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, a clearing agency, its Board of Directors, and its members determine to allocate to individual service users. *See* Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; and 26154 (October 3, 1988), 53 FR 39556.

[114] *See* Section 1501(b) of the System Procedures.

[115] *See* Section 6 of the Operating Agreement.

[116] *See* Standards Release, *supra*, note 31.

[117] Rule 17a-1 (17 CFR 240.17a-1 (1988)) requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records, as are made or received by it in the course of its business. As registered government securities brokers, RMJ and RMJ Securities would be subject to similar recordkeeping requirements under Rule 17a-3 (17 CFR 240.17a-3 (1988) and Rule 17a-4 (17 CFR 240.17a-4 (1988)). SPNTCO is subject to similar requirements under federal banking regulations. *See* 12 CFR 205 (1988).

[118] Rule 17f-2 (17 CFR 240.17f-2 (1988)) requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officers, and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints also must be sent to the Federal Bureau of Investigation. As registered government securities brokers, RMJ and RMJ Securities would be subject to this Rule 17f-2 requirement. SPNTCO is subject to a similar requirement under federal banking laws.

[119] Rule 17f-1 (17 CFR 240.17f-1 (1988)) requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security and to inquire with respect to certain securities which come into its possession whether the security has been reported lost, missing, or stolen. As registered government securities brokers, RMJ and RMJ Securities would be required to register in the Program. As a member of the Federal Reserve System SPNTCO is registered in the Program.

[120] *See* CBT and CME letters.

[121] *See* Letter from Richard Ketchum, Director, Division of Market Regulation, to Robert A. McTamaney, Esq., Carter, Ledyard & Milburn, dated January 12, 1989.

Section 17A(b)(3)(A) of the Act also requires Delta to have the capacity to enforce participant compliance with System Procedures.[122] System Procedures must provide Delta with the authority and ability to discipline participants via appropriate sanctions [123] and must provide fair procedures for the imposition of such sanctions.[124] as discussed below, System Procedures contain appropriate sanctions and provide Delta the authority to impose such sanctions in an equitable manner.

Delta may fine, suspend, or limit the activities of any participant for violations of System Procedures. Prior to the imposition of such sanctions, Delta would furnish the affected participant with written notice of charges and would give that participant an opportunity to have its claim heard before an Executive Committee of Delta's Board of Directors.[125] All Executive Committee decisions would be in writing and would be appealable to Delta's Board of Directors, who could affirm, reverse, or modify the decision.[126] Under section 19(d)(2) of the Act, a disciplined participant could appeal a final decision of the Executive Committee or Delta's Board of Directors to the Commission, which could affirm or reverse that decision pursuant to section 19(f) of the Act.[127]

One commentator believes that System Procedures do not provide procedural due process for disciplined participants in a manner consistent with sections 17A(b)(3)(G) and 17A(b)(3)(H) of the Act, because, according to that commentator, SPNB and CapMAC would be able to suspend participants or deny admission without being required to afford them procedural due process.[128] The Commission disagrees for several reasons. First, although a participants' admission and continued participation in the System are contingent upon it being an account party on SPNB's letter of credit and an insured party under CapMAC's surety bond, Delta would make any admission or suspension decision for a failure to meet that criteria, and due process procedures described in the System Procedures would apply. Second, in the event an applicant presents a letter of credit or surety bond from an unaffiliated entity other than SPNB or CapMAC, and if such letter of credit or surety bond is (i) in an amount equal to Delta's existing credit enhancement facility;[129] and (ii) otherwise comparable (including the credit rating of the issuer) to Delta's existing credit enhancement facility, Delta has represented to the Commission that it will consider promptly the acceptance of such letter of credit or surety and, if it decides to accept such letter of credit or surety, promptly will take all necessary steps to implement that decision.

2. Fair Representation

Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Act does not define the term fair representation or establish particular standards of representation. Instead, it provides that the Commission must determine on a case-by-case basis whether the rules of the clearing agency regarding the manner in which decisions are made provide fair representation to participants and shareholders.[130]

The Commission believes Delta's governance procedures provide fair representation to participants in the administration of Delta's affairs. According to the Standards Release, one aspect of the fair representation requirement can be satisfied when a clearing agency has a participant advisory committee that has a meaningful opportunity to influence decisions made by the clearing agency's Board of Directors.[131] Under System Procedures, a committee of 5 to 15 participants ("Participants' Committee") will advise Delta's Board of Directors on matters pertaining to the operation of the System.[132]

Although Delta governance procedures provide for the Participants' Committee, commentators [133] argue that those procedures do not provide participants fair representation in the selection of Delta's Board because Delta's Board would be selected solely by Delta shareholders with no input from System participants.[134] In contrast, Delta argues that its Board selection process is appropriate, because Delta shareholders rather than System participants assume the full business risks of owning and operating the company.

Because Delta governance procedures are not consistent with that portion of section 17A(b)(3)(C) requiring fair representation to participants in the selection of a clearing agency's directors, Delta has requested an exemption from that requirement. In adopting GSA, Congress cited section 17A(b)(3)(C) as a requirement in which the Commission should recognize distinctions between proprietary and membership clearing agencies and should exercise its discretionary authority to interpret and adapt that requirement, where appropriate, to proprietary clearing agencies.[135]

The Commission believes that it is appropriate to grant Delta an exemption from section 17A(b)(3)(C). Unlike other registered clearing agencies, Delta likely will not serve as the sole or central clearing facility for any particular market or identifiable group of market participants. Similarly, Delta will not

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[122] Several commentators state that the Delta application fails to demonstrate that Delta is so organized and has the capacity to be able to enforce its rules as required by section 17A(b)(3)(A). *See, e.g.*, OCC and CBT letters. The Commission believes Delta's organization satisfies that requirement. Delta's procedures, for example, require all Delta participants to comply with Delta's rules as a condition to continued participation in Delta. Furthermore, Delta has instructed SPNTCO to advise Delta of all participant delivery or payment delays, both of which constitute violations of Delta's rules. Moreover, Delta's rules provide specific sanctions and disciplinary procedures for violations of Delta's rules. Although Delta does not have an operating history, the Commission will oversee Delta's operations and take appropriate action in the event any evidence emerges that Delta is unable or unwilling to enforce its rules.

[123] *See* section 17A(b)(3)(G) of the Act.

[124] *See* section 17A(b)(3)(H) of the Act.

[125] Participants subject to summary suspension would receive notice of that suspension after it has been imposed but would be able to appeal that suspension to the Executive Committee.

[126] Any decision by the Executive Committee to affirm a summary suspension would be appealable to the Board of Directors as of right, but any Executive Committee decision not involving summary suspension would be appealable only at the discretion of the Board of Directors.

[127] Under section 19(f), the Commission could affirm a sanction imposed by Delta if: (1) The grounds on which the sanction is based exist in fact; (2) the sanction is in accordance with System Procedures; and (3) those procedures are and were applied in a manner consistent with the Act. The Commission could reverse any sanctions not meeting the conditions described above or any sanction imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Persons adversely affected by Commission decisions under section 19 of the Act also can obtain review of those decisions in a U.S. Court of Appeals under section 25(b)(1) of the Act.

[128] *See* CBT letters.

[129] The Commission notes that this credit enhancement facility would provide as much as $200 million to cover losses arising from defaults by one or more participants.

[130] *See* Standards Release and Full Registration Order.

[131] *See* Standards Release.

[132] The Participants' Committee will be selected by Delta's Board of Directors and will act in an advisory capacity only (*i.e.*, Delta will not bound by any advice or recommendation of the Participants' Committee).

[133] See OCC, Amex, and CBT letters.

[134] The number of directors would be fixed from time to time by the Board at no less than one nor more than thirteen. Directors would be elected by Delta shareholders at their annual meeting to serve one-year terms.

[135] *See* 132 Cong. Rec. S15798 (October 9, 1987).

mutualize among participants, through a clearing fund or through direct assessments, risks of loss associated with participant defaults or system losses. In the market for OTC Treasury options, Delta, RMJ, and SPNTCO will represent one of numerous trading and clearing system alternatives. Moreover, securities options and futures exchanges and clearinghouses also will be available to market participants that trade in derivative products overlying Treasury securities. The Commission also notes that the Delta System does not have an operating history and that the composition of Delta's participants and System trading volume are unknown at this time. For those reasons, the Commission believes that an exemption from section 17A(b)(3)(C) is appropriate at this time. Before granting Delta full registration as a clearing agency, however, the Commission plans to re-evaluate Delta's governance structure in light of the System's operating history. If at the end of the temporary registration period the Commission believes changed circumstances indicate that Delta should no longer receive a partial exemption from section 17A(b)(3)(C), the Commission will modify or terminate that exemption.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3)(I) provides that a clearing agency's rules may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed below, the Commission believes the System Procedures and Delta's registration as a clearing agency would not impose any inappropriate burdens on competition and indeed should promote increased competition.

The Commission believes that Delta's registration will promote increased competition in the Treasury options market. Specifically, the Commission believes that Delta, in conjunction with its facilities managers, can make efficient, automated processing available to a wider universe of institutions by decreasing the need for each institution to develop its own in-house processing systems, hire personnel, and incur other expenses associated with transaction processing. With these efficiencies, dealers and other investors may be more inclined to trade OTC Treasury options as an alternative method to hedge portfolio risk or discover price movements in the market. Moreover, the assurance of Delta's guarantee of performance regarding all System options may permit fuller participation of some relatively smaller dealers in the OTC government securities options market. Consistent with section 17A(b)(3)(B), System Procedures provide that a wide variety of financial institutions may apply for System participation provided that they satisfy applicable financial responsibility standards as contemplated by section 17A(b)(4)(B).

The Commission believes that Delta's registration will not result in any inappropriate burden on competition among banks or other entities providing clearing services. Banks and other entities providing clearing services can participate in the System and likely will continue to perform settlement services outside the System for government securities brokers and dealers. To the contrary, the Commission believes that approval of this application will, in accordance with Congressional intent, promote additional competition among organizations providing clearing services, all to the benefit of investors and the marketplace.

4. Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That section also provides that clearing agency rules not impose any schedule of prices or fix rates for services rendered by participants. As described below, the Commission believes the System Procedures and fees are consistent with these provisions.

System participants will be charged transaction-based fees for both the use of the brokerage service provided by RMJ and the use of the clearing service arranged by Delta through SPNTCO. Each party to a transaction brokered by RMJ on a blind basis will be charged both a brokerage commission and a clearing fee. Each party to a transaction effected on a fully disclosed basis without the use of RMJ brokerage services will be charged by Delta a clearing fee only. Brokerage commissions and clearing fees assessed against participants would be collected by Delta.

The Commission has reviewed Delta's proposed fees and found them to apply equally to all participants. Furthermore, the Commission believes System Procedures do not in any manner impose prices or fix rates for services provided by participants. Therefore, the Commission believes that Delta's fees are consistent with section 17A(b)(3) of the Act. Delta will be required to file changes to its fees with the Commission pursuant to section 19(b) and Rule 19b–4 under the Act.

5. Delta's "Rules of the Clearing Agency" Interpretation Request

Delta has requested an interpretation from the Commission concerning the phrase "rules of the clearing agency" and associated filing requirements under section 19(b) of the Act and Rule 19b–4 thereunder.[136] Several commentators [137] oppose the request and argue that such an interpretation will place significant aspects of the System outside Commission oversight and will disadvantage other self-regulatory organizations subject to a more expansive interpretation of the phrase. Nevertheless, Delta believes that its requested interpretation is appropriate in the context of a proprietary clearing agency that is not owned or controlled by its participants. Delta also believes that the interpretation will apply only to very limited subject matters and potential changes in Delta's governance structure, and will not affect System operations or Delta participants. In that context, the Commission notes that the Division has issued a no-action letter related to Delta's request subject to modification or revocation at any time as necessary to further the purposes of the Act.[138]

IV. Conclusions and Determinations

The Commission has reviewed Delta's application for registration as a clearing agency pursuant to sections 17A(b) and 19(a)(1) of the Act. The Commission also has reviewed Delta's request for an exemption from section 17A(b)(3)(C) of the Act.

After reviewing Delta's application for registration, the Commission has determined that Delta is organized and has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions; safeguard securities and funds in its custody or control or for which it is responsible; comply with the provisions of the Act and the rules and regulations thereunder; enforce compliance by its

[136] Specifically, Delta requests an interpretation that would exclude from the filing requirements of section 19(b) changes to Delta's corporate governance documents (*e.g.*, Delta's articles of incorporation, and corporate by-laws that do not affect Delta's participants or the safeguarding of securities and funds.

[137] *See, e.g.*, OCC and CBT letters.

[138] *See* letter from Jonathan Kallman, Assistant Director, Division, to William Lynch, Gaston & Snow, counsel for Delta, dated January 12, 1989.

participants with System Procedures; and carry out the purposes of section 17A of the Act. The Commission also has determined that System Procedures are designed to promote prompt and accurate clearance and settlement of securities transactions; assure the safeguarding of securities and funds that are in the custody or control of Delta or for which it is responsible; foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; prevent unfair discrimination in the admission of participants or among participants in the use of Delta; and, in general, protect investors and the public interest. In addition, the Commission has determined that System Procedures provide for the equitable allocation of reasonable dues, fees, and other charges among participants; do not impose any schedule of prices, or fix rates or other fees for services rendered by participants; provide for appropriate discipline of participants for a violation of any provision of System Procedures by expulsion, suspension, limitation of activities, fines, censure, or any other fitting sanction. They also provide a fair procedure with respect to the disciplining of participants, the denial of participation to applicants, and the prohibition or limitation by Delta of any person with respect to access to System services; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has granted Delta a partial exemption from section 17A(b)(3)(C) of the Act. The Commission finds that granting the above exemption request is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds.

It is therefore ordered, pursuant to sections 17A(b)(2) and 19(a) of the Act, that Delta's registration be and it hereby is granted for a period of 36 months from the date of this Order, and that Delta be granted the exemptions described above subject to the terms, exemption, and other qualifications contained in this Order.

By the Commission.

Dated: January 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1158 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26447; File No. SR-PSE-87-20]

Filing of Proposed Rule Change; The Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S..C 78s(b)(1), notice is hereby given that on June 22, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposes the following changes to certain Sections of its Constitution regarding the termination of certain services currently provided by the Pacific Clearing Corporation (the "PCC") and the Pacific Securities Depository Trust Company (the "PSDTC"). The applicable sections of the Constitution are as follows: Article III, Section 2(b) (Eligibility of Governors), Article IV, section 4 (Clearing Committee), Article VII, section 4 (Payment Purchase Price), and Article XV, section 1 (Clearing). (Italics indicates new language; brackets indicate language to be deleted.)

Article III—Elections, Meetings, Terms of Office, Proxies

Sec. 1. through Sec. 2(a). No change.

Eligibility of Governors

Sec. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm [of the Pacific Clearing Corporation] or of a participant firm of [the Pacific Securities Depository Trust Company Incorporated] *any subsidiary of the Exchange performing depository or clearing functions,* or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors. Of the Governors in each of the classes specified in section 2(a), above, at least one shall be a member of the Exchange, at least two shall be office members or office allied members of the Exchange, and one shall be a representative of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the Board at all times.

Article IV—Standing Committees of the Exchange

Sec. 1. through Sec. 3. No change.

Clearing Committee

Sec. 4. It shall be the duty of this committee [, which shall consist of the Board of Directors of the Pacific Clearing Corporation] to promulgate and recommend to the Board of Governors, *as appropriate,* rules pertaining to the settlement of Exchange contracts and to prescribe practices and procedures relating thereto.

Article VII—Transfer of Membership

Payment Purchase Price

Sec. 1. through Sec. 3. No change.

Sec. 4. At least four days prior to the effective date of admission to membership of the transferee, any purchase price being paid for such transfer shall be paid to the Exchange. The only claim of the transferor to such purchase price shall be to any surplus remaining after the application of such purchase price to the following purposes and in the following order or priority:

(a) The full payment of all dues, fees, charges, fines and contributions assessable against said membership or payable by the transferor or his member firm to the Exchange and [to the Pacific Clearing Corporation], *if applicable, to any entity of the Exchange performing clearing or depository functions.*

(b) The payment to members or member firms of all filed claims arising from member contracts if and to the extent that the same shall be determined by the Board of Governors to have arisen out of contracts had between the parties thereto in the ordinary course of business and shall not have been disallowed by the Board of Governors.

(c) The payment of all member contracts that are made subject to the rules of another exchange, provided that such claim shall have been allowed by the Board of Governors.

Article XV—Clearing Transactions

Clearing

Sec. 1. The [Pacific Clearing Corporation, a wholly owned subsidiary of the Exchange, (] *Exchange, or any entity designated by the Board of Governors (in either case,* hereinafter referred to as the "Clearing

Corporation") [shall] *may* provide facilities for (1) the clearing of Exchange and other transactions of members; (2) the borrowing and transfer of securities for members; (3) the rendering of such accounting or other service for members [as it deems] *deemed* appropriate *by the Board of Governors.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change is a result of a determination made by the Board of Governors, that it is in the best interests of the Exchange to terminate certain services currently provided by the PCC and the PSDTC. In terminating these services, the Exchange must also revise those provisions of the PSE Constitution that are set forth below, with a summary of the reasons why the Articles require amending.

Article III, Section 2(b)—Eligibility of Governors

Article III, section 2(b), currently provides, among other things, that any officer or director of a member firm of the PCC or of a participant firm of the PSDTC or an officer, director or general partner of the parent or subsidiary corporation of the PCC or the PSDTC is eligible to be elected as a member of the Board of Governors of the Exchange. The proposed amendment removes the specific references to the PCC and the PSDTC and provides that any officer or director of a member firm or any subsidiary of the Exchange performing depository or clearing functions or an officer, director or general partner of the parent or a subsidiary corporation of such member firm or participant firm is eligible to be elected as a member of the Board of Governors. The purpose of the amendment is to conform Article III, section 2(b) with the anticipated termination of certain services provided by the PCC and the PSDTC. The amendment would not affect the eligibility of any Governor serving on the Board of Governors who is an officer or director of a member firm of the PCC or of a participant firm of the PSDTC and would continue to permit such individuals affiliated with any subsidiary of the Exchange performing depository of clearing functions to be eligible to serve on the Board of Governors.

Article IV, Section 4—Clearing Committee

Article IV, section 4 currently specifies that the membership of the Clearing Committee, a standing committee of the Exchange (the "Clearing Committee" or the "Committee"), shall consist of the Board of Directors of the PCC and that the Committee's duties are to recommend to the Board of Governors rules and procedures pertaining to the settlement of Exchange contracts. The proposed amendment eliminates the reference to the specific composition of the Committee, thereby delegating to the Board of Governors the appointment of Committee members, and prescribes that the Committee shall perform its duties relating to the settlement of Exchange contracts as appropriate. The purpose of the proposed amendment is to make the composition of the membership of the Clearing Committee flexible and its duties consistent with whatever clearing and settlement functions may be performed.

Article VII, Section 4—Payment Purchase Price

Section 4(a) of Article VII provides, in connection with the transfer of memberships, that prior to the effective date of admission to membership of the transferee, the purchase price paid for such transfer shall be paid to the Exchange. The transferor is entitled to the surplus of the purchase price paid after deducting, among other things, the amounts payable in connection with dues and assessments of the transferor payable to the Exchange and the PCC. The proposed amendment to Article VII, section 4(a) deletes the specific reference to the PCC and provides that the amount of the purchase price to which the transferor is entitled shall not include amounts payable in connection with dues and assessments of the transferor payable to the Exchange and if applicable, to any entity of the Exchange performing clearing or depository functions.

Article XV, Section 1—Clearing

Article XV, section 1 specifically provides that the PCC *shall* provide facilities for the clearing of transactions of members and certain other services. The proposed amendment to Article XV, section 1 eliminates the reference to the PCC and substitutes language providing that the Exchange or any entity designated by the Board of Governors *may* provide the same list of services. As with the other amendments, the purpose of this amendment is to conform Article XV, section 1 with the anticipated termination of certain services provided by the PCC.

This proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it will protect investors and the public interest by conforming the rules of the Exchange to the termination decision.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Request for Comments

To assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR–PSE–87–20.

Copies of the submission, all subsequent amendments, all written

statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing (SR–PSE–87–20) and of any subsequent amendments also will be available for inspection and copying at the principal office of PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1156 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16751; 811–5261]

American Capital World Investment Series, Inc.; Application

January 11, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Capital World Investment Series, Inc.

Relevant 1940 Act Sections: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 17, 1988 and amended on December 12, 1988. Supplemental letters to the application were filed on December 23, 1988 and on January 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons 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 February 6, 1989. 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 lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 2800 Post Oak Boulevard, P.O. Box 3121, Houston, Texas 77253–3121.

For Further Information Contact: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022 or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Maryland corporation and open-end diversified management company, filed a Registration Statement on Form N–8A on August 3, 1987.

2. Applicant has never made a public offering of its securities and does not propose to make a public offering or to engage in business of any kind. Applicant did make an initial sale of 848,026 shares of its common stock to its investment adviser, American Capital Asset Management, Inc., at a net asset value per share of $11.91. On October 7, 1988, Applicant sold its portfolio securities and made a cash distribution in complete liquidation to its sole shareholder. As of October 7, 1988, Applicant's total net asset value was $9,403,886.00, with a net asset value per share of $11.09.

3. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

4. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which are securityholders of Applicant.

5. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1152 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16752; 812–6900]

Banque Nationale de Paris; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Banque Nationale de Paris.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale of any type of its equity securities in the United States.

Filing Date: The application was filed on October 13, 1987, and an amended application was filed on October 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 6, 1989. 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 lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o George M. Cohen, Esq., Cleary, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is the largest commercial bank in France and, together with its subsidiaries, one of the ten largest commercial banks in the world. The Applicant has numerous subsidiaries and affiliates within and outside of France which engage in a full range of general commercial banking activities as well as in other financially oriented activities. As of December 31, 1987, the Applicant and its subsidiaries

and affiliates had consolidated assets of $182.7 billion. Consolidated customer deposits and consolidated consumer loans amounted to $72.5 billion and $87.9 billion, respectively. (French francs (FF) have been converted at the rate of exchange of U.S. $1.00=5.34FF, a median rate on the Paris Stock Exchange on December 31, 1987.) The Republic of France (or its designees) owns 100% of the voting capital stock of the Applicant. Applicant has also issued to the public in France two types of non-voting equity securities.

2. The Applicant and its subsidiaries and affiliates are subject to comprehensive banking regulations in each major jurisdiction in which they operate. In particular, the Applicant is subject to extensive government regulation as a banking organization in France under a structure that is generally comparable to regulations applicable to banks in the United States and in other European countries. No country other than France accounts for more than 10% of total consolidated assets or revenues. Rules and regulations governing the operations of French banks range from licensing requirements and restrictions on the scope of non-banking activities to detailed balance sheet ratios and regular reporting and reserve requirements.

3. In the United States the Applicant has state-licensed banking branches in New York, Chicago, San Francisco and Los Angeles and offices and agencies in other states. At December 31, 1987, assets of Applicant's United States branches, agencies and subsidiaries amounted to approximately $12.6 billion, or 6.9% of the total consolidated assets of the Applicant.

4. The Applicant is subject to federal reporting requirements under the Bank Holding Company Act of 1956, and its U.S. branches, offices and agencies are subject to examination requirements under the International Banking Act of 1978. Applicant's New York branch is subject to extensive state regulation, and the other branches and agencies of the Applicant are subject to extensive regulations comparable to those of New York.

5. The Applicant and/or the Republic of France may at some time wish to establish a market in the United States for Applicant's equity securities through private placement or public offerings, either directly or in the form of American depositary shares represented by American depositary receipts. The term equity securities as used in connection with the future offerings described herein and more fully set forth in the application shall include any class or type of equity security which the Applicant may at the time be authorized to issue under French law or which the Applicant may make available to its shareholders through a rights offering.

6. Should the Applicant make a public offering of its equity securities in the United States, such offering would be registered under the Securities Act of 1933 (the "1933 Act"). In connection with any such offering, the Applicant would file a registration statement with the SEC and would not sell such securities until the registration statement had been declared effective by the SEC. In addition, the Applicant would become subject to and would comply with the reporting requirements applicable to foreign issuers under the Securities Exchange Act of 1934. In connection with the offering, the Applicant would comply with the prospectus disclosure and delivery requirements of the 1933 Act. The Applicant would ensure that any placement of its equity securities in the United States under circumstances not requiring registration under the 1933 Act would meet the prevailing standards for an exemption from registration under the 1933 Act.

7. The requested order will supplement a prior order (Investment Company Act Release No. 10813, August 7, 1979) under which the Applicant was exempted from all provisions of the 1940 Act in connection with the issuance and sale of its commercial paper and other debt securities in the United States.

Applicant's Undertakings

1. The Applicant undertakes that any prospectus relating to an offering of the type described above and in the application would contain a description of the business of the Applicant. It would also contain the Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing, and such prospectus would disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks. Such prospectus would be updated promptly to reflect material changes in the financial condition of the Applicant. Any private placement memorandum delivered in any such placement would contain disclosure at least as comprehensive as that customarily made by foreign issuers making private placements in the United States.

2. The Applicant undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon any order granted pursuant to its application or in connection with the equity securities distributed thereby. The Applicant further undertakes that in connection with any such offering it would appoint an agent in the City of New York to accept service of process. Such submission to jurisdiction and appointment of an agent for service of process would be irrevocable for so long as any of the Applicant's equity securities issued in reliance upon any order granted pursuant to its application remained outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process would not affect the right of any holder of such equity securities to bring suit in any court having jurisdiction over the Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of the securities or have any responsibilities or duties to act for such holders.

3. The Applicant undertakes with regard to public offerings of equity securities that are not issued in the United States or sold to U.S. persons in primary offerings (but where because of factors such as the development of a secondary market in the securities, there is a reasonable possibility that such equity securities could be offered in the United States or to U.S. persons), that the Applicant will adopt agreements and procedures reasonably designed to prevent such securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

4. The Applicant has a substantial banking presence in the United States through its branches, offices and agencies in New York and in other states. The Applicant represents that it has no present intention to curtail its banking operations in the United States so as to cease to be subject to regulation under applicable United States federal or state banking legislation. If, however, such operations are curtailed in the future with the result that the Applicant is no longer subject to such regulation in the United States, the Applicant agrees that it will continue to comply with the undertakings concerning the Applicant's submission to jurisdiction and appointment of an agent for service of process, as set forth in paragraph 2 above, until such time as there shall be no holders in the United States of the Applicant's equity securities issued in reliance upon any order made pursuant to the application. The Applicant would

issue equity securities in the United States only so long as the Applicant is supervised and examined by French governmental authorities having the power of supervision over banks in France and, in respect of its U.S. banking operations, by State or federal authorities in the United States having the power of supervision over banks in the United States. The Applicant represents that it has no present intention to curtail its banking operations in France so as to cease to be subject to banking regulations in France.

5. The Applicant consents to any SEC order granting the application being expressly conditioned upon its compliance with the undertakings and representations summarized above and more fully set forth in its application.

Applicant's Legal Analysis

The requested order is both necessary and appropriate in the public interest. By providing the Applicant with the opportunity to have greater access to the U.S. capital markets, approval of the application would advance the policies underlying the International Banking Act of 1978, which includes placing United States banks and foreign banks on a basis of competitive equality in their U.S. transactions. Approval would also make a major foreign issuer's equity securities available to the general investing public, as well as to institutional and sophisticated investors, subject to the protections of the U.S. securities laws. The requested order is consistent with the protection of investors. The Applicant is subject to a comprehensive scheme of regulation both in France and in the United States. The requested order is consistent with the purposes of the 1940 Act because regulation of commercial banks was not within the intent of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

January 11, 1989.

[FR Doc. 89-1153 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16745, 812-7192]

Bear, Stearns & Co. Inc.; Application

January 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bear, Stearns & Co. Inc. (the "Applicant"), on behalf of Municipal Securities Trust, High Income Series.

Relevant Sections of the 1940 Act: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of the Application: The Applicant seeks an order permitting it as sponsor of Municipal Securities Trust, High Income Series (any particular series of such entity hereinafter referred to as a "Trust") to purchase certain specified securities (the "Bonds") from the Trusts and for an order granting confidential treatment for certain information regarding the Bonds.

Filing Date: The application was filed on December 12, 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 January 30, 1989. 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 lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10117.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

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 who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Trusts are sponsored by the Applicant and its units ("Units") are registered under the Securities Act of 1933, as amended. The Trusts were formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trusts which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal (credit risk) than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trusts are not rated by any national rating organization and the market for such bonds may not be as broad as the market for rated bonds.

3. The Trusts have invested in bonds which were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trusts in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds and are infrequently traded because there are fewer bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if a Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

The Applicant is concerned that if a portfolio security is being disposed of one of the Trusts for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude the Applicant from bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the bond. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The bids for the Bonds in question as of the date of the filing of the application are all substantially below the current value of the Bonds as determined by the independent evaluator of the Trusts. The

inability of the Trusts to sell the Bonds to the Applicant in these circumstances at a price at least equal to the Bonds' current value would be detrimental to Unit holders and not in furtherance of the Act or consistent with the Act's enunciated goal of protecting investors. The application seeks an exemption from Section 17(a) which would permit the Applicant, the sponsor of the Trusts, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. It is submitted that disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trusts will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust's indenture.

2. While it is important for the SEC to review the information regarding the Bonds, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of the Applicant and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to the Applicant.

3. The Bonds are being sold by the Trusts because their credit quality is no longer consistent with the Trusts' credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated bonds, is concerned that public disclosure of this information may have an adverse effect on the value of both the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. Best Price

Before executing any sale of the privately negotiated Bonds to the Applicant, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and in doing so, the Trustee will be required to advertise the bond on national municipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum price increment (i.e., at least ⅛th of 1% of principal amount or $1.25 per $1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to the transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. Fair Price

Before effecting a sale to the Applicant where it is the only bidder and there are no other bids available, the Trustee will be required to determine whether such price is a "fair price." Determining whether a price is a "fair price," the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (i.e., appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with the Applicant, where the Applicant quotes the only price, and "fair price," to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. Previous Institutional Repurchases

Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time a Trust makes its sale of the Bond, the price at which the Trust sells the Bond to the Applicant will not be less than the highest price paid to any such institutional holder. This procedure offers further indication that the price at which the Applicant would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.

4. Remittance of Future Profit

The Applicant undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bond would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by the Applicant less (i) the price previously paid to the Trust (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization), thus eliminating the profit possibility from any self-dealing. If a Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from that Trust.

5. Departmental Independence

While the determination that the Bonds should be sold from the Trusts was made by the Applicant as sponsor, the personnel of the Applicant making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at the Applicant is involved in the selection and purchase of securities on the part of each Trust and has direct involvement in the administration and monitoring of the Trusts. The public finance department and the municipal bond department of the Applicant perform the underwriting and market making activities for municipal bonds. The decision to sell a portfolio security by the Trusts originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trusts for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trustes with the Applicant.

6. Segregated Records

The Applicant undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1087 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16750; (812-6936)]

Elan Funds, Inc.; Application

January 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Elan Funds, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 18(g).

Summary of Application: Applicant seeks an order to permit the implementation of a proposed dividend policy involving the issuance and sale of two separate classes of shares in each of three investment portfolios in the manner described below.

Filing Dates: The application was filed on December 15, 1987, and an amendment to the application was filed on January 9, 1989.

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 February 3, 1989. 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 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, 600 Seventeenth Street, Suite 1605 South, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney (202) 272-3045, or Brion R. Thompson, Branch Chief (202) 272-3016 (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. On November 2, 1987, Applicant's predecessor filed a Registration Statement under both the 1940 Act and the Securities Act of 1933 on Form N-1A which was subsequently declared effective by the SEC. On February 23, 1988, Applicant filed a Post-Effective Amendment to adopt this Registration Statement as its own. Applicant offers three separate money market portfolios (the Money Market Fund, U.S. Government Money Market Fund and Tax-Exempt Money Market Fund) that are designed to meet the short-term cash management needs of institutional customers and other investors. The three portfolios are referred to individually as "Fund" and collectively as "Funds".

2. Applicant uses its best efforts to maintain the net asset value of each Fund at $1.00 per share. The net asset value per share of each Fund is computed using the amortized cost method in accordance with the requirements of Rule 2a-7 under the 1940 Act.

3. Shares of the Funds are offered to the public without a sales load. Shares may be purchased by individuals, corporations and other types of investors. Payment for share purchases must be by check or money order, or by federal funds wire.

4. Applicant executes all purchase orders for shares of each Fund on the same day an order and payment are received in proper form, regardless of the form by which payment is made. As a result, an investor becomes a shareholder on the date of such receipt.

5. Each Fund declares its net investment income as a dividend on a daily basis and pays dividends monthly. Currently, shares of each Fund begin earning dividends on the day a purchase order is executed, and continue to earn dividends through and including the day before the shares are redeemed.

6. Applicant believes that its current dividend policy serves the legitimate needs of institutional investors such as bank trust departments that purchase shares by federal funds wire and require that payment for redeemed shares also be made by federal funds wire on the redemption date. Applicant is concerned, however, that its current dividend policy may not be optimal for investors who purchase shares by check or money order because of the delay in converting such payment into good funds for investment.

7. Applicant believes that certain other money market funds address this issue by delaying the execution of share purchase orders until check or money order payments are converted into federal funds. Applicant's custodial and transfer agency systems, however, are programmed to process all purchase orders on the day the orders are received, and Applicant believes that the required programming changes will not be cost-effective, may increase costs to shareholders and may create other operational problems.

8. As a result, Applicant wishes to implement the proposed dividend policy described below whereby investors who purchase Fund shares by federal funds wire will earn dividends beginning on the day their shares are purchased through and including the day before the investors are entitled to receive redemption proceeds by federal funds wire (which will be either the redemption date or the next business day, depending upon the time of a day a redemption request is received by Applicant's transfer agent). Other investors, who make purchase payment by check or money order, will earn dividends beginning the next business day after their shares are purchased through and including the day on which the shares are redeemed.

9. Applicant will implement the proposed dividend policy through the issuance of two separate classes of shares, referred to as "Class 1 Shares" and "Class 2 Shares", in each Fund. The creation of two classes of shares will avoid concerns arising under state law if different dividend record dates were used in the manner described below for different shares within the same class. In addition, Applicant will compute the net asset value of each Fund twice each business day in accordance with Rule 22c-1 under the 1940 Act. The first daily pricing, referred to as the "First Pricing", is currently scheduled to occur as of 10:30 a.m. Central Time. The second daily pricing, referred to as the "Second Pricing", is currently scheduled to occur as of the closing of trading on the New York Stock Exchange (the "NYSE").

10. Investors who purchase shares by check or money order will be permitted to buy only Class 1 Shares of a Fund. Investors who purchase shares through the transfer of federal funds will be permitted to buy only Class 2 Shares of a Fund. Each Fund's Class 1 Shares and

Class 2 Shares will have identical voting, dividend and liquidation rights. The only difference between the classes (other than their class designations) will relate to the timing of dividends earned.

11. Each Fund will declare one dividend each day from the day's net income shortly before the First Pricing (or the comparable time on non-business days). All shareholders of each Fund will participate in the particular Fund's dividned on a *pro rata* basis. Neither class of shares in a Fund will therefore have any priority over the other class of shares in the same Fund as to the distribution of assets (in liquidation or otherwise) or as to payment of dividends. However, in declaring the daily dividend, each Fund will utilize two record dates. More particularly, dividends will be declared daily in per share amounts determined by dividing a Fund's net income by the sum of: (i) The number of Class 1 Shares that were outstanding at the opening of business on the day the dividend is declared (or if such day is a non-business day that were outstanding at the opening of business on the last business day immediately preceding the day the dividend is declared), and (ii) the number of Class 2 Shares that were outstanding immediately after the First Pricing on the day the dividend is declared (or if such day is a non-business day that were outstanding immediately after the First Pricing on the last business day immediately preceding the day the dividend is declared).

2. The effect of the proposed dividend policy will be as follows. An investor who places a purchase order that is received by Applicant on a business day by the First Pricing may acquire Class 2 Shares of a Fund at the First Pricing and begin earning dividends on the day of purchase if payment for the shares is made in federal funds. In the case of non-institutional investors, payment in federal funds must be guaranteed by a creditworthy institution. Purchase orders for Class 2 Shares that are received after the First Pricing will not be accepted. Redemption orders for Class 2 Shares will be redeemed on the day of receipt by Applicant at either the First Pricing or Second Pricing, depending upon the time of day the redemption order is received. If a redemption order is received by the First Pricing, Applicant expects that, absent unusual circumstances, the redemption proceeds will be wired to the investor involved on the redemption date. Class 2 Shares that are redeemed at the First Pricing will not earn a dividend on the redemption date. If a redemption order is received after the First Pricing, Applicant expects that the redemption proceeds will be wired to the investor on the next business day. Class 2 Shares that are redeemed at the Second Pricing will earn a dividend on the redemption date, which is the day prior to the day redemption proceeds are to be paid by Applicant. In contrast, although purchase orders for Class 1 Shares will be executed on the day an order is received in proper form, Class 1 Shares will not be credited with their first dividend until the day after purchase, but will, in all cases, be credited with their last dividend on the day they are redeemed. Redemption proceeds for Class 1 Shares will be paid by Applicant to investors after the day of redemption in accordance with Rule 22c–1 under the 1940 Act.

13. Finally, an investor who purchases Class 2 Shares on a Friday or a day preceding a holiday will receive the dividend declared on the day of purchase and also the dividends that are declared on the Saturday, Sunday or holiday that immediately follows such purchase; but an investor who redeems Class 2 Shares on such a day will not receive the dividends declared on the redemption date or any day thereafter (unless the redemption order is received after the First Pricing and the investor, therefore, is not entitled to receive the redemption proceeds until the following business day). An investor who purchases Class I Shares on a Friday or a day preceding a holiday will not receive the dividend declared on the day of purchase or the dividends that are declared on the Saturday, Sunday or holiday that immediately follows such purchase, but an investor who redeems Class 1 Shares on a Friday or a day preceding a holiday will, in all cases, receive the dividends declared on the days metioned. These differences in dividend payments track the earnings that will be received by the Funds on each investor's investment in the Funds.

Applicant's Legal Analysis

1. Applicant requests an exemptive order pursuant to section 6(c) to the extent that the proposed dividend policy, including the issuance and sale of two separate classes of shares in each Fund as described above, might be deemed to constitute a "senior security" within the meaning of section 18(g) and therefore be prohibited by section 18(f)(1) of the 1940 Act.

2. Applicant submits that the relief requested is grounded on the legitimate business and accounting needs of the investors for which the Funds' policies are designed, will more fairly reflect the timing of actual earnings on the investments made by particular investors and will not adversely affect the interests of any shareholders.

3. Applicant also maintains that the proposed policy does not violate Rule 22c–1 under the 1940 Act. The participation of the Class 2 Shareholders in the dividends declared on the day their shares are purchased will not affect the amount per share paid to the Applicant's Class 1 Shareholders because federal funds received from the sale of Class 2 Shares will be available for investment on the date of receipt, and the earnings thereon for the day will be included in a Fund's dividend net income for that day. Conversely, because Applicant will normally be unable to invest funds received from investors purchasing Class 1 Shares by check or money order on the purchase day, the proposed dividend policy avoids the possible yield dilution that could occur if dividends were paid on Class 1 Shares on the purchase date. It also properly credits Class 1 Shareholders with their last dividend on the day their shares are redeemed since Applicant will have use of their investment monies on that date.

4. Applicant maintains that its proposed policy will further the interests of shareholders by permitting (i) the wire payment of redemption proceeds on the same day a share redemption order is executed, (ii) the coordination of a Fund's dividend policy with the accounting systems of institutional shareholders and (iii) the matching of dividend payments on Fund shares with the receipt of interest payments on portfolio investments.

Applicant's Conditions

If the requested order is granted, Applicant agrees that:

1. It will not reduce the amount of any dividend declared to shareholders with respect to any Fund in order to maintain a Fund's net asset value per share at $1.00 when calculated to the nearest 1%.

2. It will adhere to any rule, regulation or pronouncement of the SEC in the future that affects Applicant's proposed dividend policy described in the application, including those aspects of the policy relating to the daily declaration of dividends and the twice-daily pricing of Fund shares.

3. It acknowledges that the requested exemptive order is limited to section 18 of the 1940 Act, and that the issuance of such exemptive order shall not imply any SEC approval, authorization or acquiescence regarding any issue arising under section 22 of the 1940 Act or Rule 22c–1.

4. Applicant's transfer agent will make federal funds available with respect to checks and money orders for the purchase of Class 1 Shares on the morning of the first business day after receipt, before the First Pricing of Applicant's shares.

5. Applicant's will, directly or through its agents, maintain all records, accounts, journals and other documents that are either explicity or implicitly required by the Application or are necessary in order to satisfy the representations and conditions set forth or referred to herein.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1154 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9324]

McClatchy Newspaper Inc.; Application

January 11, 1989.

McClatchy Newspapers, Inc. ("Company") (class A common stock, $.01 par value, American Stock Exchange), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's common stock recently was registered and commenced trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 2, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1157 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16753; (812-7052)]

Pacific American Fund et al.; Application

January 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval of Certain Offers of Exchange under the Investment Company Act of 1940 ("1940 Act").

Applicants: Pacific American Fund ("Pacific"), Westcore Trust ("Westcore"), ALPS Securities, Inc. ("ALPS") and Fidelity Distributors Corp. ("Fidelity") (collectively, "Applicants").

Relevant 1940 Act Section: Approval requested under section 11(a).

Summary of Application: Applicants seek an order approving certain proposed offers of exchange of shares among the existing investment portfolios offered by Pacific, Westcore and any other future investment companies for which First Interstate Investment Services, Inc. ("FIIS"), First Interstate Bank of Denver, N.A. ("FIBD"), First Interstate Bank of Oregon, N.A. ("FIOR"), or their subsidiaries or affiliates serves as investment adviser or sub-adviser ("Fund" or "Funds") on a basis other than their respective net asset value per share at the time of exchange and permitting the imposition of a nominal administrative fee of $7.50 on such exchanges.

Filing Dates: The application was filed on June 22, 1988, and amended on December 8 and December 23, 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 February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Drinker Biddle & Reath, 1100 Philadelphia National Bank Building, Broad & Chestnut Streets, Philadelphia, PA 19107, Attention: Joseph P. Galda, Esq.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland at (301) 258-4300).

Applicant's Representations

1. Pacific and Westcore are open-end, management investment companies registered under the 1940 Act. Pacific is a series company that currently offers investors a selection of two Funds: the Money Market Portfolio and the Short-term Government Portfolio (each of which is a No-Load Fund). Westcore is a series company that currently offers a selection of twelve Funds: the Money Market Fund, which is a No-Load Fund and eleven Load Funds: the MIDCO Growth Fund, the Oregon Tax-Exempt Fund, the GNMA Fund, the Basic Value Fund, the Bonds Plus Fund, the Long-Term Bond Fund, the Intermediate-Term Bond Fund, the Modern Value Equity Fund, the Equity Income Fund, the Short-Term Bond Fund, and the Short-Term Government Fund. Shares of the No Load Funds are offered at net asset value without a sales load. Shares of the Load Funds are offered at net asset value, plus a maximum front-end sales load of 4.50% of the public offering price per share. None of the Funds currently charges a contingent deferred sales load or a redemption fee.

2. FIIS serves as investment adviser and FIBD and Denver Investment Advisors, Inc. ("DIA"), a wholly owned subsidiary of FIBD, serve as sub-investment advisers to Pacific. FIBD and FIOR serve as the investment advisers to Westcore and DIA serves as sub-investment adviser to certain of the Westcore Funds. Fidelity serves as distributor of the shares of Pacific and ALPS serves as distributor of the shares

of Westcore. FIIS, FIBD and FIOR are affiliates of First Interstate Bancorp, but neither Fidelity nor ALPS are so affiliated.

3. As distributors of the shares of Pacific and Westcore, Fidelity and ALPS will maintain a continuous public offering of shares of the No-Load Funds at their respective net asset values without a sales charge, and a continuous public offering of the shares of the Load Funds at their respective current net asset values plus the applicable sales load.

4. Applicants seek the ability to permit the following exchange offers between Funds: (i) Shares of a Load Fund may be exchanged for shares of another Load Fund on the basis of relative net asset value without the payment of a sales load; (ii) shares of a No-Load Fund may be exchanged for shares of another No-Load Fund on the basis of relative net asset value without the payment of a sales load; (iii) shares of a Load Fund may be exchanged for shares of a No-Load Fund on the basis of relative net asset value without the payment of a sales load; and (iv) shares of a No-Load Fund may be exchanged for shares of any Load Fund subject to the sales load normally charged by the Load Fund (unless the investment in those shares was previously subject to a sales load by one of the Funds). Any sales load charged with respect to the acquired security will be a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales loads previously paid on the exchanged security. In the event that a sales charge is imposed on an exchange, any right of accumulation or letter of intent as described in the Funds' prospectuses would be considered in determining the sales charge applicable to the exchange. Also, each exchange will be subject to the minimum investment requirements of the Fund's shares that are to be acquired in the exchange.

5. Exchanges will be subject to the imposition of a nominal administrative fee of $7.50 per transaction. For a complete description of the administrative fee, *see* a copy of services agreement between Westcore and Fund/Plan which is attached as an exhibit to the application.

6. In each of the exchanges described above, shares acquired through reinvestment and dividends and capital gain distributions will be deemed to be sold with a sales load, if any, equal to the sales load, if any, previously paid on the shares on which the dividend was paid or distribution made. Moreover, when a shareholder exchanges less than all of this shares of a particular Fund, the shares upon which the highest sales load was previously paid will be deemed to be exchanged first.

7. Applicants are aware that some exchanges might provide an opportunity for brokers, acting ostensibly on behalf of their clients, to initiate exchanges for the broker's own benefit. However, Applicants represent that ALPS and Fidelity have established sufficient internal review procedures to ensure that exchanges are made at the request of investors and not for the brokers' personal gain and that they are actively monitoring customer complaints and will continue to be alert to the possible abuses that might occur regarding the exchange privileges.

Applicants' Legal Conclusions

1. The proposed exchange privilege described above is designed to expedite voluntary redemption and purchase transactions initiated solely at a shareholder's request.

2. The proposed exhange privilege is consistent with revised proposed Rule 11a–3 under the 1940 Act.

3. Since the exchange privilege adds desirable flexibility for shareholders of Pacific and Westcore, giving credit for sales loads previously paid while ensuring that improper use of the exhange privilege will not disrupt distribution of the Load Funds, the Applicants submit that approving the exchange privilege is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicants agree to the following conditions:

(1) Applicants will comply with the provisions of revised proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

(2) Applicants will limit any future offers of exchnge involving any future Funds to the terms and conditions described in the application.

(3) Shareholders of Applicants will be notified by means of the Funds' prospectuses of the fact that Applicants reserve the right to modify or terminate the exhange privileges.

(4) In connection with the sales literature and advertising that refer to the Funds' exhange privileges, the Funds will consider the desirability of disclosing that the Funds reserve the right to modify or terminate the exchange privilege.

(5) Shareholders will be notified in writing at least 60 days prior to any modification or termination of the Funds' exhange privilege, except in the case of a reduction of any administrative fee, in which case prior notice shall not be required; provided, however, that the temporary cessation of the sale of the Funds' shares under extraordinary circumstances such as when the Funds are unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of the Funds' shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the Funds' exhange privilege.

(6) The Applicants undertake to obtain an amended order from the SEC prior to any modification (i.e., manner, frequency, or basis) of the Funds' exchange privilege in a manner not described in the application, as amended; provided, however, that an amended order need not be obtained to terminate the Funds' exchange privilege.

(7) Applicants will limit the administrative fee imposed upon an exhange to an amount not exceeding $7.50.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1155 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62]

Amendent of Effective Date of Increased Duties on Certain Products of the European Community

SUMMARY: The United States Trade Representative hereby amends the effective date of the increased duties on imports of certain articles the product of the European Community imposed in his notice of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, (202) 395–3074, or Les Glad (202) 395–3077, for technical and policy information, or Richard Parker (202) 395–6800, for legal issues.

SUPPLEMENTARY INFORMATION: On December 29, 1988, pursuant to authority delegated by the President to the United States Trade Representative in Proclamation No. 5759 of December 24, 1987, the United States Trade Representative partially terminated the

suspension of the application of increased duties on imports of certain products of the European Community proclaimed in Proclamation No. 5759 and modified the list of affected products. That notice (53 FR 53115) set 12:02 a.m., January 1, 1989, as an effective date for the imposition of the increased duties.

In order to exclude goods that received a veterinary certificate for export before January 1, 1989 or that were shipped before January 1, 1989, from the application of increased duties, this notice amends the previously announced effective date by stipulating that: The increased duties being applied pursuant to Proclmation 5759 as provided in, and the modifications to the Harmonized Tariff Schedule of the United States made by, the notice of December 29, 1988, shall not apply to articles entered, or withdrawn from warehouse for consumption, before February 1, 1989, which were either exported prior to January 1, 1989, or received a veterinary certificate for export prior to January 1, 1989.

This amendment shall be published in the **Federal Register.**

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 89-1202 Filed 1-17-89; 8:45 am]

BILLING CODE 3190-01-M

Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on policies and practices that should be considered with respect to designation of countries under section 182 the Omnibus Trade and Competitiveness Act of 1988 (Act).

SUMMARY: Section 182 of the Act requires USTR to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection. (19 U.S.C. 2242.) In addition, USTR is required to determine which of those countries could be subject to self-initiation of a section 301 investigation. USTR is requesting written submissions from the public concerning foreign countries' policies and practices that should be considered under section 182.

Submissions should consist of a description of the problems experienced and their effect on U.S. industry. Initial analysis of issues will begin in February and initial submissions should be sufficiently detailed to assist in this analysis, although parties can supplement these submissions with additional information or make additional submissions at a later date.

Initial submissions should be received by February 6, 1989. Parties must provide twenty copies of the submission to Dorthy Balaban, Section 301 Committee, Room 222, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: C. Michael Hathaway, Senior Deputy General Counsel, Office of the U.S. Trade Representative, or Catherin R. Field, Associate General Counsel, Office of the U.S. Trade Representative (202) 395-3432.

C. Michael Hathaway,

Senior Deputy General Counsel.

[FR Doc. 89-1068 Filed 1-17-89; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-69]

Unfair Trade Practices; Notice of Public Hearing; Japanese Barriers to the Provision of Architectural, Engineering, and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing.

SUMMARY: On November 21, 1988, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974 with respect to Japanese barriers to the provision of architectural, engineering, and construction services, and related consulting services (53 FR 47897). The USTR has received written comments on the issues raised in this investigation, and will conduct a public hearing on this matter on February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395-7271, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The International Engineering and Construction Industries Council has requested a public hearing on this matter, and the USTR believes such a hearing is an appropriate means of obtaining information to prepare for future consultations with the Government of Japan regarding this investigation.

The section 301 Committee will hold a public hearing at 10 a.m. on February 14, 1989. The hearing will be conducted in Court Room B (Room 111) at the International Trade Commission, 500 E Street SW., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on February 3, 1989, to Dorothy Balaban, Staff Assistant to the Section 310 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to 15 CFR 2006.8.

Persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on February 6, 1989, to Ms. Balaban at the address listed above.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-1140 Filed 1-17-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars; Small Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued and cancelled by the Small Airplane Directorate since January 1988. These AC's, listed below, relate to Part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Foland, Manager, Policy & Guidance Section, ACE-111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street,

Kansas City, Missouri 64106; commercial telephone (816) 426–6941, or FTS 867–6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed in response to the needs identified by industry during the FAA Airframe Policy and Program Review Public Meeting held in Wichita, Kansas, on June 8–9, 1983; and to update existing policy information for Small Airplane Certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments to, each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Cancelled

AC 23.807–1A, dated October 29, 1987, Subject: Emergency Exist Size and Shape, was cancelled December 2, 1988. It was determined that this AC had served its purpose and is no longer needed.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Subsequent Distribution Unit, M–443.2, Washington, DC 20596.

ADVISORY CIRCULARS PUBLISHED

AC Number	Subject	Date signed
23–9	Evaluation of Flight Loads on Small Airplanes with T, V, +, or Y Empennage Configurations	1/27/88

ADVISORY CIRCULARS CANCELLED

AC number	Subject	Date signed	Date cancelled
23.807–1A	Emergency Exit Size and Shape	10/29/87	12/2/88

Barry D. Clements,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1089 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–13–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement/Environmental Impact Report on the Peninsula Commute Service (PCS), San Francisco Downtown Station Relocation Project, CA

AGENCIES: Urban Mass Transportation Administration, DOT (NEPA), Peninsula Commute Service Joint Powers Board (CEQA).

ACTION: Notice to prepare an Environmental Impact Statement/Environmental Impact Report.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Peninsula Corridor Study Joint Powers Board (JPB) are undertaking the preparation of an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the PCS Relocation of the San Francisco Downtown Terminal Station project. The NEPA Lead Agency will be UMTA. The CEQA Lead Agency will be the JPB.

The PCS is the commuter rail system that currently serves the San Francisco Peninsula between San Jose and the existing terminal station in San Francisco located at Fourth and Townsend Streets.

The present location of the terminal at its Fourth and Townsend Street site (at grade) is not considered desirable either from transportation or land use/public planning perspectives and is not consistent with the proposed Mission Bay Plan in San Francisco. The study has the overall objective of identifying a cost effective and desirable location for the PCS's downtown terminal station so that it best serves the transit patrons, most of whom are destined to the downtown financial district, and meets the needs of increasing travel into downtown San Francisco.

The EIS/EIR is being prepared in conformance with the requirements of the California Environmental Quality Act and 40 CFR Part 1500, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Clark, UMTA Region IX, 211 Main Street, Suite 1160, San Francisco, CA 94105, (415) 974–7317.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Public scoping meetings will be held on February 15, 1989 at 3:00 p.m. and 7:00 p.m. at the State Office Building at 350 McAllister, San Francisco, Room 1158. The purpose of the scoping meetings is to establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, staff will present a description of the proposed scope of the study using maps and visual aids, as well as a plan for action citizen involvement program and a projected work schedule. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be either orally at the meeting or in writing by February 21, 1989.

Description of Study Area

The San Francisco Downtown Station Relocation Study area is located in the vicinity of the existing Terminal Station and the Transbay Transit Terminal east of the San Francisco Financial District. In general terms, the study area is bounded by Market Street, the Embarcadero, China Basin Channel, Sixteenth Street and Seventh Streets. The primary evaluation corridors are along Seventh, Second, Main, King, Embarcadero and Howard Streets. Market Street, the Transbay Transit Terminal, and Mission Bay sites are the locations under consideration for the relocated terminus.

Alternatives

Transit alternatives proposed for consideration in the study area include the "No-Build" or "Do-Nothing" Alternative and several build alternatives including lower cost capital improvements that would relocate the existing terminal station. They alternatives proposed for consideration are the following:

Number and Description

1. Do Nothing, under which the terminal station would remain at Fourth and Townsend with existing feeder bus service.
2. Low Cost Capital Improvements under which the present terminal station would be relocated to the east side of Seventh Street opposite Hooper on the South side of the China Basin Channel with enhanced bus feeder service to and from the relocated station.

3. Low Cost Capital Improvements identical to Alternative 2 with a connection on the east side of the terminal to an extension of Muni Metro beyond its presently proposed terminal at Fifth and King Streets.
4A. Routing PCS in subway along King Street and Second Street with a station on King Street at Fifth Street and a terminal station on Second Street at Market Street.
4B. Routing PCS in subway along Seventh Street with a station on Seventh Street at Townsend Street and terminal station on Seventh Street at Market Street.
5A. Routing PCS in subway along King Street, the Embarcadero, Main Street, and Howard Street with a station on King Street at Fifth Street and a terminal station at the existing Transbay Transit Terminal. This alternative may include an undergound yard on Main Street between Folsom and Byrant Streets.
5B. Routing PCS in subway along King Street, Second Street, and Howard Street with a station on King Street at Fifth Street and a terminal station at the existing Transbay Transit Terminal. This alternative may include an underground yard on Main Street between Folsom and Bryant Streets.
5C. Routing PCS in subway along King Street, Colin P. Kelly Street, and under the Interstate 80 approach to the Bay Bridge. It would then rise from subway onto aerial structure to meet the existing elevated approach to the Transbay Transit Terminal. Stations would be located on King Street at Fifth Street and a terminal station on the upper level of the existing Transbay Transit Terminal.

Comments at the scoping meeting should focus on the appropriateness of these and other alternatives for consideration in the study, not on individual preferences for a particular alternative as being the most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, business disruptions, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State (CEQA) environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meeting should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Issued on: January 12, 1989.

Brigid Hynes-Cherin,

Regional Manager, UMTA.

[FR Doc. 89–1172 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements submitted to OMB for Review

Date: January 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 202220.

Internal Revenue Service

OMB Number: New.
Form Number: 8812.
Type of Review: New Collection.
Title: Application for Exemption From Social Security Taxes and Waiver of Benefits.
Description: The new Internal Revenue Code section 3127 extends the current law of exemption from social security taxes and benefits from self-employed taxpayers to their employees when both employee and employer are members of a qualifying religious sect or division and both apply for exemption.
Respondents: Individuals or households.
Estimated Number of Respondents: 24,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—7 minutes
Learning about the law or the form—8 minutes
Preparing the form—10 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Estimated Total Recordkeeping/Reporting Burden: 18,000 hours.

OMB Number: 1545–0736.
Form Number: None.
Type of Review: Extension.
Title: Accounting for Long-term Contracts.
Description: These recordkeeping requirements are necessary to determine whether the taxpayer properly allocates indirect contract costs to extended period long-term contracts in accordance with the proposed regulations. The recordkeeping requirement is effective for taxable years beginning after 1982. The information will be used to verify the taxpayer's allocations of certain indirect costs.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 110 hours.
Estimated Total Recordkeeping Burden: 110,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–1150 Filed 1–17–89; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Loan Guaranty; Percentage To Determine Net Value

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Veterans Administration (VA) loan guaranty program concerning the percentage to be used in determining the net value of a property to the Administrator under the provisions of 38 CFR 36.4301. The percentage applicable for Fiscal Year 1989 is 10.63 percent.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of

Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. (202) 233–6376.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* The formulas for determining whether VA will offer the lender an election to convey the property to the VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Administrator estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale. Under the definition, VA will review each year the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. This section provides that VA will annually update the percentage and publish a notice of the new percentage in the **Federal Register.** For Fiscal Year 1988, the percentage was 10.75 percent. For Fiscal Year 1989, the percentage will be 10.63 percent, based upon the operating expenses incurred for Fiscal Years 1986, 1987 and 1988. Accordingly, VA will subtract 10.63 percent from the fair market value of the property to be liquidated in order to arrive at the "net value" of the property to VA. The new percentage will be used in "net value" calculations made by VA on or after January 18, 1989.

Dated: January 5, 1989.

Thomas K. Turnage,

Administrator.

[FR Doc. 89–1083 Filed 1–17–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 9, 1989, 54 FR 730.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 11, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG-22 for the agenda January 11, 1989:

Item No., Docket No., and Company

CAG-22—RP86-165-002, RP86-165-003, RP86-165-004, RP86-166-001, RP86-166-002 and RP86-166-003, Kentucky West Virginia Gas Company.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1221 Filed 1-13-89 1:36 pm]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 23, 1989.

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.

Date: January 13, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1246 Filed 1-13-89, 3:45 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 16, 23, 30, and February 6, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 16

Thursday, January 19

10:00 a.m.
Briefing on Medical Use of By-Product Materials (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 23—Tentative

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Wednesday, January 25

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)
2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 6—Tentative

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)
2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, February 9

10:00 a.m.
Briefing on Final Rule on Early Site Permits, Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)
2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production on Utilization Facilites" scheduled for January 13, *cancelled.*

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.

January 13, 1989.

[FR Doc. 89-1233 Filed 1-13-89; 2:38 pm]

BILLING CODE 7590-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Tuesday, February 7, 1989 9:00 a.m. to 2:00 p.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 13 cases decided by the National Commissioners pursuant to a reference

under 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board United States Parole Commission, (301) 492–5987.

Date: January 12, 1989.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89–1201 Filed 1–13–89; 1:36 pm]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery; Foreign Fisheries

Correction

In rule document 88-30215 beginning on page 32 in the issue of Tuesday, January 3, 1989, make the following correction:

On page 34, in "Table 1", in the first table-column, under "Species", the seventh line should read, "Other Fish:®".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0165]

Orally Administered Menstrual Drug Products for Over-the Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-26155 beginning on page 46194 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46194, in the first column, the document headings are incomplete and should read as set forth above.

2. On page 46200, in the third column, in the first complete paragraph, in the second line, "November 16, 1989" should read "March 16, 1989".

3. On the same page, in the same column, in the second complete paragraph, in the second line, "March 16, 1989" should read "November 16, 1989".

BILLING CODE 1505-01-D

federal register

Wednesday
January 18, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management; General Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management; General Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The final rule establishes regulations for the leasing of minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule specifies leasing procedures and basic lease conditions and is intended to ensure that adjacent States and the public have an early opportunity for effective participation in the leasing process. The rule is the second in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur. The series of rules recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, permitting balanced orderly leasing of minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other uses and users of the OCS pursuant to the Department of the Interior's (DOI) authority under the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334).

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and postlease activities associated with the discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and similar activities associated with OCS minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through the States local governments, that are directly affected by OCS mineral mining activities are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral mining activities and other ocean users and uses;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for OCS mineral resource development which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for wise and efficient management of the natural resources of the OCS.

This rule establishes practices and procedures specific to the activities associated with the leasing of OCS minerals other than oil, gas, and sulphur. A final rule is also being established to govern postlease operations.

On April 19, 1985, MMS published an Advance Notice of Proposed Rulemaking (ANPR) for regulations to govern the leasing of OCS minerals other than oil, gas, or sulphur. Comments and recommendations received in response to that ANPR were summarized in the Public Comments and Agency Responses portion of the Notice of Proposed Rulemaking (NPR) that was published on August 18, 1988 (53 FR 31424), to propose rules to govern leasing of minerals other than oil, gas, and sulphur in the OCS.

On October 3, 1988, a Notice was published in the **Federal Register** (53 FR 38739) which extended the comment period on the proposed rule from October 3, 1988, to November 2, 1988. A total of 23 comments and recommendations were received. Five of those requested that the comment period be extended beyond October 3, 1988. The 18 remaining responses to the August 18, 1988, NPR were comprised of 7 comments and recommendations from State agencies; 1 comment from industry; 4 comments from environmental organizations; 2 comments from individuals; 2 comments from other Federal Agencies; 1 comment from a U.S. Senator; and 1 comment from a group comprised of representatives of State governments, environmental organizations, and industry. A review and discussion of those comments will be found in the section entitled Public Comments and Agency Responses.

The first part of the regulatory regime to govern OCS mineral mining activities (30 CFR Part 280) was published in the **Federal Register** on July 5, 1988 (53 FR 25242), effective August 4, 1988. It established practices and procedures specific to prospecting activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. The provisions of 30 CFR Part 280 are also applicable to G&G exploration and scientific research activities conducted by a lessee on unleased lands and those conducted on leased OCS lands by a person who is not the operator or lessee. A final rule designed to govern operations under leases for such OCS minerals appears in another part of this **Federal Register.**

The DOI's Responsibilities

This rule is an action within the statutory authority of the Secretary of the Interior (Secretary) and is intended to promote and encourage private enterprise in the development of an economically sound and stable domestic materials industry in the United States while providing an appropriate level of protection for the human, marine, and coastal environments.

Section 8(k) of the OCSLA provides specific legal authority and responsibility for the leasing of minerals other than oil, gas, and sulphur in the OCS. This authority and responsibility exercised in conjunction with the 20 other sections of the OCSLA which are applicable in whole or in part, and other laws provide the Secretary with adequate flexibility and guidelines to

establish and administer an OCS minerals leasing and mining program for minerals other than oil, gas, and sulphur.

The DOI and MMS recognize the potential for adverse environmental impacts as a result of OCS mineral development activities. These potential impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Under DOI's case-by-case approach, issues common to all forms of OCS mining activities associated with OCS minerals other than oil, gas, and sulphur will be covered by regulations governing G&G prospecting and scientific research (30 CFR Part 280), leasing (30 CFR Part 281), and postlease operations (30 CFR Part 282).

The planned lease sale for Norton Sound is an example of the way DOI carries out its National Environmental Policy Act (NEPA) responsibilities. On March 11, 1988, MMS published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** (53 FR 8134) in association with a Request for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as the one being prepared for Norton Sound will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are defined. Commodity-specific issues will be covered by specially designed lease stipulations identified at the time the targeted OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval of Delineation, Testing, or Mining Plans for the conduct of postlease operations. Based on this approach and information obtained from lessees in support of proposed operations and as a result of MMS's Environmental Studies Program, MMS believes that protection of the environment is compatible with the recovery of minerals other than oil, gas, and sulphur from the OCS.

Background

During the period of 1954 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated at 30 CFR Part 256 under the OCSLA. These lease offerings resulted in the receipt of high cash bonus bids totaling more than $54 million. (See Table 1.)

TABLE 1—MINERALS MANAGEMENT SERVICE

Lease offering; date of offering; and location	Number of tracts offered	Acres offered	Number of tracts bid on	Total bonus high bid	Number of tracts leased	Number of bids rejected	Number of bids received
Gulf of Mexico salt and sulphur lease offerings:[1] [2]							
1—10/23/54—Sul-LA	108	523,630	5	$1,233,500	5	.....	5
8—05/19/60—Sa-LA	10	22,085	1	75,250	1	.....	1
13—12/14/65—Sul-TX	658	957,520	50	33,740,309	50	.....	113
17—09/05/67—Sa-LA	8	16,995	1	30,564	1	.....	1
20—05/13/69—Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S—02/24/88—Sul-CGOM	51	593,971	14	15,149,327	14	.....	20
Totals	955	2,279,806	109	53,906,995	75	34	183
Pacific phosphate lease offering:[3] [4]							
PH—12/15/61—So-CA	16	80,640	6	122,000	6	.....	6

[1] Total amount of all bids received for all lease offerings—$82,527,068.
[2] Total amount of all rentals for all lease offerings—$297,860.
[3] Total amount of all bids received—$122,000.
[4] Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

The MMS is working closely with nine coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with the mining of OCS minerals other than oil, gas, and sulphur. These arrangements include a special working group with Alaska and five task forces involving eight other coastal States: Hawaii; Oregon; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Minerals other than oil, gas, and sulphur which may be discovered and produced from the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS mineral resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially exercise leverage over commodity prices.

The OCS mineral deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The rule establishes a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease operations will facilitate the consultation and coordination processes authorized under Federal law.

Regulation Organization

This rule governs the leasing of minerals other than oil, gas, and sulphur in the OCS. The rule is divided into five subparts. Subpart A, General, contains requirements of a general nature such as qualifications of a lessee and disclosure of information. Definitions applicable to the entire rule are also contained in

Subpart A, Subpart B, Leasing Procedures, establishes the procedures which will be followed in preparing for and conducting lease sales. This subpart establishes many of the provisions which assure input from States, industry, interest groups, and the public. Subpart C, Financial Considerations, establishes provisions for the determination and payment of rent and royalty and the submission of bonds. Subpart D, Assignments and Lease Extensions, establishes provisions for the transfer of leases and for the extension of leases in the event of a suspension of production or other operations. Subpart E, Termination of Leases, establishes provisions for the relinquishment and termination of leases.

Public Comments and Agency Responses

Provisions of the final rule are discussed below in a section-by-section discussion of the comments and recommendations received in response to the August 18, 1988, NPR (53 FR 31424).

General Comments

Comment: Some commenters stated that the rule was premature due to the depressed conditions of the minerals markets and apparent lack of industry interest. One of the commenters suggested that any lease sales that are to be held in the near future, such as the proposed sale off Alaska, could be accomplished through State/Federal agreements without regulations in place.

Response: The MMS does not agree that the rules are premature. Not all minerals markets are depressed and some minerals industry interest in leasing OCS minerals exists. Forty-five G&G exploration (prospecting) permits have been issued since the 1960's, with over 80 percent of those issued having been issued since 1982. The MMS agrees that lease sales could be held in the absence of these regulations. However, mining company representatives have stated that without regulations, they cannot accurately predict the economics of the operation nor can they raise necessary venture capital without regulatory certainty.

Comment: Several commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining and recommended that DOI seek new legislation. The reasons given for the recommendation include: (1) That the OCSLA was written for oil and gas and never intended for marine mining; (2) the OCSLA does not adequately balance national and State interests and provides for little State involvement in the decisionmaking process; (3) the OCSLA does not provide for revenue sharing; (4) the OCSLA gives the Secretary too much discretion in formulating a program to govern OCS mining; and (5) the requirement for a competitive upfront cash bonus bid is a disincentive. These commenters suggested that DOI desist from further promulgation of rules under the OCSLA and seek new stand-alone legislation.

Response: The suggestion to defer promulgation of rules in favor of new stand-alone legislation was not adopted. The OCSLA expressly extends the DOI's jurisdiction and responsibility to OCS minerals other than oil, gas, and sulphur. The responsible course of action is to tailor implementing regulations in the best fashion available under law to meet the requirements of OCS mining. The OCSLA provides a clear legal basis for the promulgation of regulations to govern OCS mining. Sections 5 and 8(k) of the OCSLA, in combination with 19 other sections of the OCSLA which are applicable in whole or in part to minerals other than oil, gas, and sulphur, clearly and specifically grant authority and responsibility to the Secretary to prescribe terms and conditions appropriate to the regulation of OCS mining, including prelease prospecting, leasing, and postlease operations. Used in conjunction with other applicable OCSLA provisions and other laws, there is substantial and sufficient authority for ensuring appropriate balance of national and State interests. It is true that there is no provision for revenue sharing with adjacent coastal States but such a provision, with a limited recent exception, is also not available for oil, gas, and sulphur. Proposals for revenue sharing have been opposed by the last several administrations. Recognizing that there are differences between oil and gas and other minerals, the OCSLA provides the Secretary with the necessary flexibility for administration of a responsible OCS mining program.

There is clear value in the establishment of a separate regulatory regime for OCS minerals other than oil, gas, and sulphur. While lease sales could be held and, in fact, have been held under existing regulations, mining company representatives have expressed a desire for regulations which would permit them to more accurately predict the economics of projected operations. Greater regulatory certainty will facilitate the raising of necessary venture capital.

Comment: Several commenters recommended that DOI prepare a programmatic EIS citing the need to deal with large areas and the cumulative effects of mining. Commenters stated that the MMS Report No. 87–0035 "Marine Mining on the OCS" did not adequately address environmental effects. Commenters also recommended that DOI commit to the preparation of an EIS prior to each lease sale. Reasons cited included air quality concerns and the need to conduct an EIS when different technology is involved in a subsequent lease sale.

Response: The MMS does not agree that preparation of a programmatic EIS is necessary, desirable, or practical. The provisions of NEPA and the implementing regulations, together with DOI's interpretation of the situation and need will determine when an EIS is prepared. The MMS anticipates that an EIS will be prepared prior to the first lease sale in an area, and that the observed effects of mining activities in specific areas and the cumulative effects of actual mining operations will be addressed in subsequent NEPA documents prepared in anticipation of further lease sales. Those NEPA documents would also consider the potential impacts of mining methods and other information developed subsequent to the most recent EIS. Thus, compliance with NEPA would be accomplished on a case-by-case basis for subsequent lease sales. For lease sales subsequent to the first sale in an area, an EIS would be prepared when technology, mining methods, other conditions, or impacts are sufficiently different than the conditions or impacts considered for an earlier lease sale for which an EIS was prepared, or when otherwise required by NEPA.

Comment: A commenter recommended shared State/Federal management of the program as a means of dealing with resolution of State/Federal disputes which may be jurisdictional issues or matters arising from the implementation of cooperative agreements.

Response: The MMS anticipates that adjacent States will play an active role in the leasing program for OCS minerals other than oil, gas, and sulphur. States are encouraged to join in, or to initiate requests for, the establishment of joint State/Federal coordination arrangements. Joint State/Federal task forces or other working arrangements can serve as vehicle for coordinating efforts to enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a) and 1345(e)), or for addressing issues and concerns of the adjacent States early in the leasing process. The participants in these task forces and other working arrangements can work toward resolution of issues of mutual concern. It is MMS's responsibility to implement the authorities delegated to it under applicable Federal laws and regulations. The DOI is committed to working with the adjacent States to resolve issues of mutual concern.

Comment: Commenters recommended that MMS find a means of providing financial assistance for affected States so they can function as full partners in the process.

Response: The commenter was referring to the lack of provisions in the regulations (and in the OCSLA) for revenue sharing. The MMS recognizes the concerns of adjacent States. The MMS has attempted, through mechanisms such as joint State/Federal task forces and information exchanges, to provide adjacent States an opportunity to cooperatively participate in planning and review of offshore mining activities. This joint approach can minimize the cost to adjacent States associated with their review and assessment of OCS minerals activities.

Subpart A—General

Section 281.2 Authority.

Comment: Several commenters noted with regard to § 281.2, that the OCSLA does not grant to DOI jurisdiction over those offshore areas that are adjacent to U.S. territories and possessions.

Response: The DOI agrees with the commenters that the OCSLA does not provide jurisdiction over those offshore areas adjacent to lands over which the United States exercises jurisdiction and control but which are not States (e.g., Johnston Island). Jurisdiction over these areas is not essential to the establishment of a leasing or regulatory program and is not relevant to the promulgation of this rule.

Section 281.3 Definitions.

Comment: One commenter recommended that in § 281.3 the definition for lease be mineral and site specific.

Response: The limitation on the rights granted by a lease with regard to the mineral covered and the location of the leasehold will be specified in each OCS mineral lease. It is neither necessary nor appropriate to limit those rights through the definition of the term "lease" in the regulations. The merits of restricting the mineral rights granted by a lease to a lessee are discussed further in response to comments concerning § 281.9.

In § 281.3, the definition of "production" was deleted as unnecessary. Also, the definition of "Governor" was modified to conform to the OCSLA and the definition of "person" was modified to conform to the rules to govern operations associated with OCS minerals other than oil, gas and sulphur. No substantive change from the proposed rule is intended by these changes.

There was no § 281.4 in the proposed rule. To adjust for that omission, §§ 281.5, 281.6, 281.7, 281.8, 281.9, and 281.10 in the proposed rule have been renumbered §§ 281.4, 281.5, 281.6, 281.7, 281.8, and 281.9 respectively.

Section 281.4 (Proposed § 281.5) Qualification of lessees.

Comment: One commenter expressed doubts that award of a lease on the basis of the highest cash bonus bid, as provided for in § 281.5 (now § 281.4), was the best alternative for the minerals industry and should not be required. The commenter also noted the fact that that basis is the only authorized mechanism under the OCSLA and is further evidence of the need for new legislation.

Response: As discussed earlier, the DOI does not feel that new legislation is essential for the establishment of a regulatory regime to govern mining on the OCS for minerals other than oil, gas, and sulphur. Several industry representatives have expressed their willingness to participate in a competitive system.

Section 281.8 (Proposed § 281.9) Rights to minerals.

Comment: It was recommended that rights specified under a lease (§ 281.9, now § 281.8) should include the right to only specific minerals and that any associated minerals should be specified.

Response: This comment has not been adopted. Unless otherwise specified in the Leasing Notice, a lease issued under Part 281 will include all OCS minerals except oil, gas, sulphur, and pursuant to section 12(e) of the Act source materials essential to production of fissionable materials (§ 281.8(a)). This was done in order to minimize environmental damage and for the sake of efficiency. While a mining operation probably would be designed initially to recover certain OCS minerals, the lessee should have the right to all minerals recovered during the mining process. After investing the effort and expense required to recover OCS minerals, the lessee should not be required to return valuable materials to the seafloor as tailings simply because the right to produce those materials is not conveyed by its lease.

Several different mining operations should not be required when a single mining operation could be undertaken which would result in the area being disrupted only once. One mine-through operation rather than several mine-through operations would minimize the potential for environmental damage. When one mining operation does not produce all valuable minerals, a second mining operation or technique may be needed to recover the other minerals that are present within the lease area.

In order to be able to balance protection of the environment and mineral development, the Secretary retains the discretion to issue mineral specific leases or leases covering all minerals.

Section 281.9 (Proposed § 281.10) Jurisdictional controversies.

Comment: One commenter recommended that dispute resolution options involving jurisdictional controversies under § 281.10 (now § 281.9) should be extended to include cooperative agreements.

Another commenter noted that neither the leasing nor operating rules addressed jurisdictional questions involving a mineral resource deposit that lies in an area involving both State and Federal jurisdiction.

Response: Under § 281.9 (proposed § 281.10), the DOI construes the term "controversy" to mean litigation where the "jurisdictional controversy" relates to a dispute regarding the location of the common boundary between the OCS and State submerged lands. The Secretary may enter into agreements with the State to resolve litigated boundary disputes. The situation where an OCS resource extends under adjacent State lands is best addressed by the unitization of the common orebody as provided for in § 281.11(d)(1) of this part. The fact that an orebody extends under both State and Federal lands does not in and of itself constitute a controversy.

To address management of OCS mineral deposits which straddle State/Federal jurisdiction, DOI hopes to be able to develop an agreement with the adjacent State for joint management to the degree joint management is needed for the enforcement of safety, environmental, and conversation laws and regulations (43 U.S.C. 1334(a)) and the protection of correlative rights. The agreement would involve both the State and Federal lessees and assure coordination and cooperation to the extent necessary to maximize efficiency, reduce the regulatory burden, and obtain an equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees typically will negotiate an appropriate agreement to cover mining operations on the leases and the allocation of costs and benefits to the owners of divided interests in the area embraced by the Federal and State leases that are made subject to the unit agreement.

Subpart B—Leasing Procedures

Section 281.11 Unsolicited request for a lease sale. (Formerly Request for a lease sale and submission of information.)

Comment: A commenter recommended that MMS require submittal of environmental information under § 281.11 when a person requests a lease sale.

Response: The title of § 281.11 has been modified to better reflect the purpose of the section. The provisions of § 281.11 are voluntary, allowing those individuals with an interest in obtaining leases for OCS minerals to request that DOI initiate steps leading to a lease sale. However, the person requesting a lease sale may not be in a position to provide environmental information, and such a requirement should not bar the person from requesting that the DOI initiate steps leading to a lease sale. It would be in the interest of the person requesting the initiation of steps leading to a lease sale to provide as much information as possible. The more information that the DOI has to consider at the time it considers a request for a lease sale, the less time will be required to obtain additional information that may be needed.

Comment: A comment was made that the Governors of adjacent States should be notified when there is a request under § 281.11 for a lease sale.

Response: The Secretary intends to notify Governors of adjacent States when followup action is being taken with respect to a request for a lease sale submitted under § 281.11. Such notification would typically occur as an early step in the decision process as to whether to proceed with an OCS mineral lease sale. At that time, the Secretary may invite the Governor of an adjacent State to join in, or the Governor of the adjacent State may request initiation of, a joint State/Federal coordination arrangement. Should the Secretary decide from the offset not to initiate the steps leading to a lease sale, then there would be little need to advise the Governor of the adjoining State.

Section 281.12 Request for OCS mineral information and interest.

Comment: Commenters recommended that the Director's first step in initiating a lease sale should be the publication of a request for information and interest under § 281.12. A commenter also recommended that information should be requested on specific minerals in specific tracts.

Response: It is anticipated that in most instances the Secretary will request interest in and information on the offering of all available OCS minerals for lease. The responses to the request should include information relating to the need to limit leasehold rights to specific mineral and tract. Under these regulations, the Secretary retains the discretion to publish a proposed Leasing Notice as a first step in the leasing process when it is determined that sufficient interest and information exist to proceed with the offering of OCS minerals for lease. An example may be the offering of a tract adjacent to an existing lease where an orebody extends onto unleased land or the reoffering of tracts in an area where no new impacts need to be considered. Information concerning specific OCS minerals in a specific tract should be submitted in response to a request for information and interest. That information may also be submitted in response to a proposed Leasing Notice.

Section 281.13 Joint State/Federal coordination.

Comment: Several commenters expressed the view that § 281.13 should require establishment of joint State/Federal task forces or other arrangements rather than leaving that to the Secretary's discretion. These commenters also felt that the role of any such task force should be clarified to ensure effective participation in the decisionmaking process. One of these commenters recommended that the rules provide that any recommendations by a task force would be heeded by the Secretary, except when contrary to an overriding national interest.

Response: The Governors of adjoining States are encouraged to participate fully in joint State/Federal task forces and other arrangements. The MMS, however, has no authority to require the Governor of a State to enter into one of these arrangements. Joint State/Federal task forces and similar working arrangements have an important role in the program. They are intended to provide early and continuous State involvement in the steps in the leasing process; facilitate resolution of issues of mutual interest; provide a mechanism for planning, coordination, and consultation; and make recommendations to the Secretary for his consideration in planning for and holding lease sales. These arrangements are expected to vary from State to State based on the number of concerns and needs of the adjacent States involved. Thus, the precise nature and role of a given working arrangement should not be specified in the rule. It is anticipated that the Director will give great weight to the recommendation of a joint State/Federal task force.

Comment: Several commenters noted that the joint State/Federal coordination arrangements in § 281.13 excluded members of the public.

Response: Members of the public, including representatives of the environmental community, are not precluded from participation in the joint State/Federal coordination arrangements. In addition, meetings of joint State/Federal task forces are normally open to the public.

Comment: Several commenters recommended that § 281.13 of the rules be changed to require coastal zone consistency determination for lease sales under the provisions of the Coastal Zone Management Act (CZMA). Some commenters suggested that the case of *Secretary of the Interior vs. California*, 464 U.S. 312, applied only to oil and gas. Another commenter recommended that MMS voluntarily require CZMA review and concurrence even if such review is not required by law.

Response: The DOI believes that the CZMA does not apply to activities on the OCS other than those originally covered by the CZMA or specifically added by amendment to the CZMA such as certain oil and gas related activities and that coastal zone consistency concurrence is not required prior to a lease sale of OCS minerals regardless of the commodity involved. This view is consistent with the views expressed in the October 4, 1988, memorandum opinion of the Office of Legal Counsel of the Department of Justice to Abraham D. Sofaer, Legal Adviser, Department of State. That position is consistent with the findings in *Secretary of the Interior vs. California* and the position previously taken by DOI on this matter.

Section 281.14 OCS mining area identification.

Comment: A commenter recommended that environmental standards to be used in identifying areas for leasing be added to § 281.14.

Response: The decision to identify areas to be considered for leasing is a preliminary one which precedes environmental analysis. It would be inappropriate to apply standards at this step. To clarify the process which will be followed for a lease sale, § 281.14 was revised to state that tracts which are to be considered in an environmental analysis will be identified at the time of area identification.

Section 281.15 Tract size.

Comment: Some commenters opposed specifying in § 281.15 that "substantially larger" tract sizes may be offered when the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals. Commenters recommended that leases should not be offered until sufficient prospecting had occurred to identify the presence of desired minerals and to provide sufficient environmental information to make informed decisions. One commenter stated that fair market value requirements could not be met if a lease is offered without information about what minerals are present.

Response: The MMS does not agree with these comments. Where sufficient information is available to generate interest in participating in a lease sale, MMS need not require that potential lessees make additional investment prior to offering the area for lease. Such a requirement could serve to reduce the interest in leasing, since it would increase the financial risk to potential lessees by forcing them to make unnecessary investments in prospecting activities prior to obtaining a lease. Since information developed prior to leasing would not carry a right to lease, the requirement would be a strong disincentive to potential lessee participation in the program. With respect to the concerns regarding the availability of environmental information, it should be noted that there should be sufficient environmental information at the time that the lease sale notice is published to make informed decisions. The fact that additional exploration is needed to identify a minable orebody does not mean that there is insufficient information available to assure that exploration is carried out in an environmentally responsible manner. There will also be additional opportunities for the Secretary to review and assess potential environmental inpacts. For example, available information on environmental impacts will be assessed during the review of Delineation, Testing, and Mining Plans. Finally, the comment on meeting fair market value requirements fails to recognize that the requirement on the Government is to obtain a fair return on the rights conveyed. The information available at the time a lease is offered for sale will permit obtaining a fair return on the right conveyed since the value of the rights conveyed is dependent on the conditions and information available at the time of the sale.

Editorial changes have also been made in the text of § 281.15 to clarify the intent of the rule.

Section 281.16 Proposed leasing notice.

Comment: Several commenters were concerned that under § 281.16 the Secretary only needs to consider Governors' comments. They recommended that a provision be added to give those comments greater weight. It was suggested that OCSLA section 19 type requirements be applied. One commenter also proposed that the joint State/Federal task force plays an active role in developing the proposed leasing notice. Several commenters thought that more than 60 days are needed for Governors to submit comments.

Several commenters stated that there should be an opportunity for public comment on the proposed leasing notice.

One commenter stated that the leasing notice should specify the minerals to be offered for lease and should include environmental stipulations. The same commenter said the rule should list criteria to be considered in making a determination to hold the lease sale.

Response: The MMS believes that joint State/Federal task forces and other arrangements offer a substantial role for State participation in the leasing process. The joint arrangements used to date provide a means for early and continued State/Federal coordination and discussion of issues of mutual interest as well as issues of special interest to adjacent States. Early establishment of these arrangements and the opportunities provided for the Governor of an adjacent State to fully participate in the early steps in the leasing process should assure that few if any new issues will be raised by the Governor of an adjacent State in response to a proposed leasing notice. The 60-day time period for response tracks the time allowed in section 19 of the OCSLA for the Governor of an adjacent State to comment on a proposed leasing notice. To clarify the role of State/Federal task forces, § 281.16(a) has been revised to explicitly state that the Director shall consider the recommendations of any task force established pursuant to § 281.13 to determine lease sale procedures to be prescribed and to develop a proposed leasing notice.

The MMS believes that the proposed rule provides adquate opportunity for the public to comment on the proposed leasing notice. No change in the rule is needed. Prior to making a decision on the leasing notice, the Director will consider all available information, including comments which have been received from the public.

The right to minerals conveyed by the lease are discussed in response to comments of § 281.8. A discussion of the environmental criteria to use for decisions appears in response to comments on § 281.14. The leasing notice will contain specific lease stipulations, including measures designed to mitigate potentially adverse impacts on the environment, and § 281.16(a) has been rewritten to clarify this point.

Section 281.17 Leasing notice.

Comment: One commenter recommended that § 281.17 should provide at least a 90-day review period so that States will have the opportunity to review and respond to the leasing notice prior to the lease sale.

Response: The MMS did not adopt these comments. By the time the leasing notice is published, the States will have had a number of opportunities to comment, including joint State/Federal coordination and consultation arrangements, responding to requests for information, and the 60-day comment period following publication of the proposed leasing notice. The MMS expects that major issues of concern to an adjoining State will have already been addressed by the time the leasing notice is published.

The rights to minerals conveyed in the lease are discussed in response to comments on § 281.8. The environmental criteria to use in decisionmaking are discussed in response to comments on § 281.14. Section 281.17 already requires that the leasing notice shall specify any applicable lease stipulations. Lease stipulations would include measures required to mitigate potentially adverse impacts on the environment.

Section 281.18 Bidding system.

Comment: Many commenters recommended that cash bonus bidding under § 281.18 should not be mandated. One commenter proposed that the minimum bid for a tract be specified in the regulations.

Response: The use of competitive, cash bonus bidding is a statutory requirement of OCSLA. Minimum bids may be specified in the proposed leasing notice and the leasing notice. When minimum bids are specified, they will be based on the specific commodities offered for lease in the sale area and the conditions at the time of the sale. Since no single minimum bid would be appropriate for all cases, the minimum bid for a tract cannot be specified in the rule.

The final rule gives the Secretary the option to use deferred cash bonus

bidding when specified in the leasing notice. When the deferred bonus option is specified, the high bidder will be determined based upon the net present value of each total bid. An appropriate discount rate will be specified in the leasing notice. High bidderes who use the deferred bonus option must pay at lease 20 percent of the cash bonus prior to lease issuance. At least a total of 60 percent must be paid on or before the 5th anniversary of the lease, and payment of the remaining cash bonus must be paid on or before the 10th anniversary of the lease. The lessee may pay the bonus installments earlier than specified in the leasing notice. When a portion of the cash bonus bid is deferred, a separate bond that guarantees payment of the deferred portion of the bonus must be submitted prior to issuance of the lease. Upon payment of the full amount of the cash bonus bid, the bond guaranteeing payment will be released. This approach to the deferral of the payment of a portion of the high cash bonus bid results in all bidders being on an equal footing. Each bidder will have determined that amount of its bid, recognizing that other bids on the tract will be adjusted to recognize the time value of the portion of the bid which can be deferred.

For lease sales using oral bids, the Secretary reserves the right to reject all bids received, but it is anticipated that the high bid will normally be accepted subject only to antitrust review by the Attorney General. In frontier areas, where little is known about the resources, MMS believes that factors such as unproven technology, uncertain commercial value, high risk, and high cost to evaluate the lease will all affect the bids received. The bids of willing persons in those situations is a better indication of value of the resources than an independent, and very speculative, assessment of the value of the minerals on the lease. In other cases, where the value of minerals can be estimated with greater confidence, MMS may wish to determine whether the high bid represents a fair return for the rights conveyed. In addition, should for example, a single potential bidder attend a sale, the Secretary might wish to review the high bid to assure a fair return to the public.

Section 281.20 Submission of bids.

A new § 281.20, Submission of bids, was added to provide interested parties with necessary information concerning the submission of bids (oral and sealed). Proposed §§281.20, 281.21, and 281.22 were renumbered as §§ 281.21, 281.22, and 281.23 respectively.

Subpart C—Financial Considerations

Section 281.26 Payments.

Section 281.26(e) was revised by substituting "person" for "party" and § 281.26(f) (now § 281.26(i)) was revised to reflect revisions in the MMS's Royalty Management Program's regulations governing royalty payments. Section 281.26(f) of the proposed rule referenced certain provisions in the regulations governing product value and royalty computation. The substance of three of these provisions has been incorporated in the final rule as §§ 281.26 (f), (g), and (h). Section 281.26(i) (proposed § 281.26(f)) continues to reference appropriate provisions of the Royalty Management regulations. No substantive change was intended by these changes.

Section 281.28 Royalty.

It is anticipated that the royalty prescribed in leasing notices announcing tracts to be offered for lease will be comparable to the royalty prescribed in onshore leases which convey rights to similar mineral deposits. Where the royalty is based upon a percentage of the value or amount of the produced mineral, it will likely fall within the range of 2 to 5 percent.

Section 281.28(b) provides for a royalty free period as did the proposed rule. It was revised to specify that, when prescribed in the leasing notice and subsequently issued lease, the royalty will be reduced on OCS minerals produced from a leasehold for up to 5 consecutive years, as specified by the lessee, during the first 15 years in the life of the lease. No royalty will be due on production during any year of the specified 5-year period that occurs in the first 10 years of the lease, and one-half of the royalty otherwise due will be due on production during any year of the 5-year period that occurs in the 11th through the 15th year in the life of the lease. For example, consider a lease with a royalty rate of 4 percent specified in the lease. If the lessee chooses to initiate the 5-year period of royalty reduction starting with the 8th lease year, there would be no royalty due on production during years 8, 9, and 10; and a royalty of 2 percent would be due on production during years 11 and 12. If the lessee chooses to initiate the period of royalty reduction at the beginning of the 13th lease year for this example, a royalty of 2 percent would be due on production during years 13, 14, and 15; and the full royalty of 4 percent would be due on production thereafter. This provision is designed to encourage early development of production on a lease.

Section 281.30 Minimum royalty.

Section 281.30 was modified to clarify when minimum royalty will apply and when it is to be paid.

Section 281.33 Bonds and bonding requirements.

This section was revised to include a provision governing the submission of bonds in cases where payment of part of the cash bonus bid is deferred and to provide additional information concerning the submission of bonds.

Subpart D—Assignments and Lease Extensions

Section 281.41 Requirements for filing for transfers was revised to add provisions concerning transfer of leases.

Subpart E—Termination of Leases

Section 281.47 Cancellation of Leases.

Comment: A comment was made that § 281.47 of the regulations allows too long a time period under suspension (5 years) before cancellation.

Response: The length of time for holding a lease under suspension before cancellation is a statutory provision of section 5(a)(2)(B) of the OCSLA (43 U.S.C. 1334(a)(2)(B)) which is applicable under the circumstances specified in the OCSLA. A lessee may request lease cancellation before 5 years have elapsed.

Comment: A commenter was concerned about how long a lease would remain in effect under § 281.43 while it remained under suspension. Concern was expressed that there is no provision for compensation for minerals left in place in order to protect sensitive environmental or archeological values absent cancellation of the Lease.

Response: It is conceivable that a lease could remain under a suspension for longer than 5 years where circumstances warrant the continuance of an approved suspension beyond the original period of time specified in the approval of a lessee's request for a suspension of operations or production. The procedures for leases compensation for lost access to OCS minerals due to development and production restriction on a lease track the procedures contained in the OCSLA. Since leases issued under the regulations in this Part are subject to the OCSLA and the regulations in Part 282, they are subject to compensation limits contained in the OCSLA.

Authors

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Hauser, John V. Mirabella, Patricia H. Pecora, Sharon E. Rathbun, Gerald D. Rhodes, Jane A. Roberts, Mark H. White, and James W. Workman of MMS; Ransom Read of the Bureau of Mines; Ronald Smith and Donal F. Ziehl of the Bureau of Land Management; and John Padan of the National Oceanic and Atmospheric Administration.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be approximately $2.2 million per year. The cost estimate is based on an expectation of two sales per year.

The DOI certifies that the final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in OCS minerals related activities are not considered small due to the technical complexity and financial resources needed to conduct those OCS activities.

The information collection requirements contained in 30 CFR Part 281 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1010–0082.

Public reporting burden for this collection of information is estimated to average 23.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 632; 12203 Sunrise Valley Drive; Reston, Virginia 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: December 20, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 256 is amended and a new Part 281 is added to Title 30 of the CFR as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 256.4 [Amended]

2. Section 256.4 is amended by adding the word "and" before the word "sulphur" and by removing the words "geopressured-geothermal and associated resources, and other minerals" from the first sentence.

3. Section 256.5 is amended by revising paragraphs (d) and (k) to read as follows:

§ 256.5 Definitions.

* * * * *

(d) "Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

* * * * *

(k) Mineral means oil, gas, and sulphur; it includes sand and gravel and salt used to facilitate the development and production of oil, gas, or sulphur.

* * * * *

§ 256.37 [Amended]

4. Section 256.37 is amended by removing paragraph (d).

§ 256.58 [Amended]

5. Section 256.58 is amended by removing paragraph (d) and redesignating paragraphs (e) through (g) as paragraphs (d) through (f) respectively.

6. A new Part 281 is added to read as follows:

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Sec.

Subpart B—Leasing Procedures

Subpart C—Financial Considerations

Subpart D—Assignments and Lease Extensions

Subpart E—Termination of Leases

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

Subpart A—General

§ 281.0 Authority for information collection.

The information collection requirements contained in Part 281 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0082. The information is being

collected to determine if the applicant for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease or to determine if a requested action is warranted. The information will be used to make those determinations. The obligation to respond is mandatory.

§ 281.1 Purpose and applicability.

The purpose of these regulations is to establish procedures under which the Secretary of the Interior (Secretary) will exercise the authority granted to administer a leasing program for minerals other than oil, gas, and sulphur in the OCS. The rules in this part apply exclusively to leasing activities for minerals other than oil, gas, and sulphur in the OCS pursuant to the Act.

§ 281.2 Authority.

The Act authorizes the Secretary to grant leases for any mineral other than oil, gas, and sulphur in any area of the OCS to the qualified persons offering the highest cash bonuses on the basis of competitive bidding upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease (43 U.S.C. 1337(k)). The Secretary is to administer the leasing provisions of the Act and prescribe the rules and regulations necessary to carry out those provisions (43 U.S.C. 1334(a)).

§ 281.3 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipping OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, and mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Director" means the Director of the Minerals Management Service (MMS) of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Governor" means the Governor of a State or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

"Lease" means any form of authorization which is issued under section 8 of the Act and which authorizes exploration for, and development and production of, minerals, or the area covered by that authorization, whichever is required by the context.

"Lessee" means the person authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all persons holding that authority by or through the lessee.

"OCS mineral" means a mineral deposit or accretion found on or below the surface of the seabed but does not include oil, gas, sulphur; salt or sand and gravel intended for use in association with the development of oil, gas, or sulphur; or source materials essential to production of fissionable materials which are reserved to the United States pursuant to section 12(e) of the Act.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Overriding royalty" means a royalty created out of the lessee's interest which is over and above the royalty reserved to the lessor in the original lease.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 281.4 Qualifications of lessees.

(a) In accordance with section 8(k) of the Act, leases shall be awarded only to qualified persons offering the highest cash bonus bid.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by:

(1) Citizens and nationals of the United States;

(2) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof; or

(4) Associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 281.5 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by up to 5 years imprisonment or a fine of $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any Agency of the United States any false or fraudulent statement(s) to any matters within the Agency's jurisdiction.

§ 281.6 Appeals.

Any party adversely affected by a decision of an MMS official made pursuant to the provisions of this part shall have the right of appeal pursuant to Part 290 of this title, except as provided otherwise in § 281.21 of this part.

§ 281.7 Disclosure of information to the public.

The Secretary shall make data and information available to the public in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations (30 CFR Parts 280 and 282 and 43 CFR Part 2).

§ 281.8 Rights to minerals.

(a) Unless otherwise specified in the leasing notice, a lease for OCS minerals shall include rights to all minerals within the leased area except the following:

(1) Minerals subject to rights granted by existing leases;

(2) Oil;

(3) Gas;

(4) Sulphur;

(5) Minerals produced in direct association with oil, gas, or sulphur;

(6) Salt deposits which are identified in the leasing notice as being reserved;

(7) Sand and gravel deposits which are identified in the leasing notice as being reserved; and

(8) Source materials essential to production of fissionable materials which are reserved pursuant to section 12(a) of the Act.

(b) When an OCS mineral lease issued uner this part limits the minerals to which rights are granted, such lease

shall include rights to minerals produced in direct association with the OCS mineral specified in the lease but not the rights to minerals specifically reserved.

(c) The existence of an OCS mineral, oil and gas, or sulphur lease shall not preclude the issuance of a lease(s) for other OCS minerals in the same area. However, no OCS mineral lease shall authorize or permit the lessee thereunder to unreasonably interfere with or endanger operations under an existing OCS mineral, oil and gas, or sulphur lease.

§ 281.9 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction (43 U.S.C. 1336), either the Governor or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities under the Act or under State authority and to payment and impounding of rents, royalties, and other sums and with respect to the offering of lands for lease pending settlement of the controversy.

Subpart B—Leasing Procedures

§ 281.11 Unsolicited request for a lease sale.

(a) Any person may at any time request that OCS minerals be offered for lease. A request that OCS minerals be offered for lease shall be submitted to the Director and shall contain the following information:

(1) The area to be offered for lease.

(2) The OCS minerals of primary interest.

(3) The available OCS mineral resource and environmental information pertaining to the area of interest to be offered for lease which supports the request.

(b) Within 45 days after receipt of a request submitted under paragraph (a) of this section, the Director shall either initiate steps leading to the offer of OCS minerals for lease and notify the applicant of the action taken or inform the applicant of the reasons for not initiating steps leading to the offer of OCS minerals for lease.

(c) Any interested party may at any time submit information to the Director concerning the scheduling of proposed lease sales of OCS minerals in any area of the OCS. Such information may include but not be limited to any of the following:

(1) Benefits of conducting a lease sale in an area.

(2) Costs of conducting a lease sale in an area.

(3) Geohazards which could be encountered in an area.

(4) Geological information about an area and mineral resource potential.

(5) Environmental information about an area.

(6) Information about known archaeological resources in an area.

§ 281.12 Request for OCS mineral information and interest.

(a) When considering whether to offer OCS minerals for lease, the Secretary, upon the Department of the Interior's own initiative or as a result of a submission under § 281.11, may request indications of interest in the leasing of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in the area being considered for lease. Requests for information and interest shall be published in the **Federal Register** and may be published elsewhere.

(b) States and local governments, industry, other Federal Agencies, and all interested parties (including the public) may respond to a request for information and interest. All information provided to the Secretary will be considered in the decision whether to proceed with additional steps leading to the offering of OCS minerals for lease.

(c) The Secretary may request specific information concerning the offering of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in a broad area for lease or the offering of one or more discrete tracts which represent a minable orebody. The Secretary's request may ask for comments on OCS areas which have been determined to warrant special consideration and analysis. Requests may be for comments concerning geological conditions or archeological resources on the seabed; multiple uses of the area proposed for leasing, including navigation, recreation and fisheries; and other socioeconomic, biological, and environmental information relating to the area proposed for leasing.

§ 281.13 Joint State/Federal coordination.

(a) The Secretary may invite the adjacent State Governor(s) to join in, or the adjacent State Governor(s) may request that the Secretary join in, the establishment of a State/Federal task force or some other joint planning or coordination arrangement when industry interest exists for OCS mineral leasing or geological information appears to support the leasing of OCS minerals in specific areas. Participation in joint State/Federal task forces or other arrangements will afford the adjacent State Governor(s) opportunity for access to available data and information about the area; knowledge of progress made in the leasing process and of the results of subsequent exploration and development activities; facilitate the resolution of issues of mutual interest; and provide a mechanism for planning, coordination, consultation, and other activities which the Secretary and the Governor(s) may identify as contributing to the leasing process.

(b) State/Federal task forces or other such arrangement are to be constituted pursuant to such terms and conditions (consistent with Federal law and these regulations) as the Secretary and the adjacent State Governor(s) may agree.

(c) State/Federal task forces or other such arrangements will provide a forum which the Secretary and adjacent State Governor(s) may use for planning, consultation, and coordination on concerns associated with the offering of OCS minerals other than oil, gas, or sulphur for lease.

(d) With respect to the activities authorized under these regulations each State/Federal task force may make recommendations to the Secretary and adjacent State Governor(s) concerning:

(1) The identification of areas in which OCS minerals might be offered for lease;

(2) The potential for conflicts between the exploration and development of OCS mineral resources, other users and uses of the area, and means for resolution or mitigation of these conflicts;

(3) The economic feasibility of developing OCS mineral resources in the area proposed for leasing;

(4) Potential environmental problems and measures that might be taken to mitigate these problems;

(5) Development of guidelines and procedures for safe, environmentally responsible exploration and development practices; and

(6) Other issues of concern to the Secretary and adjacent State Governor(s).

(e) State/Federal task forces or other such arrangements might also be used to conduct or oversee research, studies, or reports (e.g., Environmental Impact Statements).

§ 281.14 OCS mining area identification.

The Secretary, after considering the available OCS mineral resources and environmental data and information, the recommendation of any joint State/Federal task force established pursuant to § 281.13 of this part, and the

comments received from interested parties, shall select the tracts to be considered for offering for lease. The selected tracts will be considered in the environmental analysis conducted for the proposed lease offering.

§ 281.15 Tract size.

The size of the tracts to be offered for lease shall be as determined by the Secretary and specified in the leasing notice. It is intended that tracts offered for lease be sufficiently large to include potentially minable OCS mineral orebodies. When the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals, the size of tracts specified in the leasing notice may be relatively large.

§ 281.16 Proposed leasing notice.

(a) Prior to offering OCS minerals in an area for lease, the Director shall assess the available information including recommendations of any joint State/Federal task force established pursuant to § 281.13 of this part to determine lease sale procedures to be prescribed and to develop a proposed leasing notice which sets out the proposed primary term of the OCS mineral leases to be offered; lease stipulations including measures to mitigate potentially adverse impacts on the environment; and such rental, royalty, and other terms and conditions as the Secretary may prescribe in the leasing notice.

(b) The proposed leasing notice shall be sent to the Governor(s) of any adjacent State(s), and a Notice of its availability shall be published in the **Federal Register** at least 60 days prior to the publication of the leasing notice.

(c) Written comments of the adjacent State Governor(s) submitted within 60 days after publication of the Notice of Availability of the proposed leasing notice shall be considered by the Secretary.

(d) Prior to publication of the leasing notice, the Secretary shall respond in writing to the comments of the adjacent State Governor(s) stating the reasons for accepting or rejecting the Governor's recommendations, or for implementing any alternative mutually acceptable approach identified in consultation with the Governor(s) as a means to provide a reasonable balance between the national interest and the well being of the citizens of the adjacent State.

§ 281.17 Leasing notice.

(a) The Director shall publish the leasing notice in the **Federal Register** at least 30 days prior to the date that OCS minerals will be offered for lease. The leasing notice shall state whether oral or sealed bids or a combination thereof will be used; the place, date, and time at which sealed bids shall be filed; and the place, date, and time at which sealed bids shall be opened and/or oral bids received. The leasing notice shall contain or reference a description of the tract(s) to be offered for lease; specify the mineral(s) to be offered for lease (if less than all OCS minerals are being offered); specify the period of time the primary term of the lease shall cover; and any stipulation(s), term(s), and condition(s) of the offer to lease (43 U.S.C. 1337(k)).

(b) The leasing notice shall contain a reference to the OCS minerals lease form which shall be issued to successful bidders.

(c) The leasing notice shall specify the terms and conditions governing the payment of the winning bid.

§ 281.18 Bidding system.

(a) The OCS minerals shall be offered by competitive, cash bonus bidding under terms and conditions specified in the leasing notice and in accordance with all applicable laws and regulations.

(b)(1) When the leasing notice specifies the use of sealed bids, such bids received in response to the leasing notice shall be opened at the place, date, and time specified in the leasing notice. The sole purpose of opening bids is to publicly announce and record the bids received, and no bids shall be accepted or rejected at that time.

(2) The Secretary reserves the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

(3) In the event the highest bids are tie bids when using sealed bidding procedures, the tied bidders may be permitted to submit oral bids to determine the highest cash bonus bidder.

(c)(1) When the leasing notice specifies the use of oral bids, oral bids shall be received at the place, time, and date and in accordance with the procedures specified in the leasing notice.

(2) The Secretary reserves the right to reject all oral bids received for any tract, regardless of the amount offered.

(d) When the leasing notice specifies the use of deferred cash bonus bidding, bids shall be received in accordance with paragraph (b) or (c) of this section, as appropriate. The high bid will be determined based upon the net present value of each total bid. The appropriate discount rate will be specified in the leasing notice. High bidders using the deferred bonus option shall pay a minimum of 20 percent of the cash bonus bid prior to lease issuance. At least a total of 60 percent of the cash bonus bid shall be due on or before the 5th anniversary of the lease, and payment of the remainder of the cash bonus bid shall be due on the 10th anniversary of the lease. The lessee shall submit a bond guaranteeing payment of the deferred portion of the bonus, in accordance with § 281.33.

§ 281.19 Lease term.

An OCS mineral lease for OCS minerals other than sand and gravel shall be for a primary term of not less than 20 years as stipulated in the leasing notice. The primary lease term for each OCS mineral shall be determined based on exploration and development requirements for the OCS minerals being offered by the Secretary. An OCS mineral lease for sand and gravel shall be for a primary term of 10 years unless otherwise stipulated in the leasing notice. A lease will continue beyond the specified primary term for so long thereafter as leased OCS minerals are being produced in accordance with an approved mining operation or the lessee is otherwise in compliance with provisions of the lease and the regulations in this chapter under which a lessee can earn continuance of the OCS mineral lease in effect.

§ 281.20 Submission of bids.

(a) If the bidder is an individual, a statement of citizenship shall accompany the bid.

(b) If the bidder is an association (including a partnership), the bid shall be accompanied by a certified statement indicating the State in which it is registered and that the association is authorized to hold mineral leases on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(c) If the bidder is a corporation, the bid shall be accompanied by the following information:

(1) Either a statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in which it was incorporated and that it is authorized to hold mineral leases on the OCS or appropriate reference to statements or record previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(2) Evidence of authority of persons signing to bind the corporation. Such evidence may be in the form of a certified copy of either the minutes of

the board of directors or of the bylaws indicating that the person signing has authority to do so, or a certificate to that effect signed by the Secretary or Assistant Secretary of the corporation over the corporate seal, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations). Bidders are advised to keep their filings current.

(3) The bid shall be executed in conformance with corporate requirements.

(d) Bidders should be aware of the provisions of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(e) When sealed bidding is specified in the leasing notice, a separate sealed bid shall be submitted for each bid unit that is bid upon as described in the leasing notice. A bid may not be submitted for less than a bidding unit identified in the leasing notice.

(f) When oral bidding is specified in the leasing notice, information which must accompany a bid pursuant to paragraph (a), (b), or (c) of this section, shall be presented to MMS at the lease sale prior to the offering of an oral bid.

§ 281.21 Award of leases.

(a)(1) The decision of the Director on bids shall be the final action of the Department, subject only to reconsideration by the Secretary, pursuant to a written request in accordance with paragraph (a)(2) of this section. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases in the OCS.

(2) Any bidder whose bid is rejected by the Director may file a written request for reconsideration with the Secretary within 15 days of notice of rejection, accompanied by a statement of reasons with a copy to the Director. The Secretary shall respond in writing either affirming or reversing the decision.

(b) Written notice of the Director's action in accepting or rejecting bids shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit three copies of the lease form to the successful bidder. As provided in § 281.26 of this part, the bidder shall, not later than the 10th business day after receipt of the lease, execute the lease, pay the first year's rental, and unless payment of a portion of the bid is deferred, pay the balance of the bonus bid. When payment of a portion of the bid is deferred, the successful bidder shall also file a bond to guarantee payment of the deferred portion as required in § 281.33. Deposits shall be refunded on high bids subsequently rejected. When three copies of the lease have been executed by the successful bidder and returned to the Director, the lease shall be executed on behalf of the United States; and one fully executed copy shall be transmitted to the successful bidder.

(c) If the successful bidder fails to execute the lease within the prescribed time or to otherwise comply with the applicable regulations, the successful bidder's deposit shall be forfeited and disposed of in the same manner as other receipts under the Act.

(d) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, the deposit shall be refunded.

(e) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder shall submit with the executed lease, evidence that the agent is authorized to act on behalf of the bidder.

§ 281.22 Lease form.

The OCS mineral leases shall be issued on the lease form prescribed by the Secretary in the leasing notice.

§ 281.23 Effective date of leases.

Leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor except that, upon written request, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

Subpart C—Financial Considerations

§ 281.26 Payments.

(a) For sealed bids, a bonus bid deposit of a specified percentage of the total amount bid is required to be submitted with the bid. The percentage of bonus bid required to be deposited will be specified in the leasing notice. The remittance may be made in cash or by Federal Reserve check, commerical check, bank draft, money order, certified check, or cashier's check made payable to "Department of the Interior—MMS." Payment of this portion of the bonus bid may not be made by Electronic Funds Transfer.

(b) For oral bids, a bonus bid deposit of a specified percentage of the total amount bid must be submitted to the official designated in the leasing notice following the completion of the oral bidding. The percentage of bonus bid required to be deposited will be specified in the leasing notice. Payment of this portion of the bonus bid shall be made by Electronic Fund Transfer within the timeframe specified in the leasing notice.

(c) The deposit received from high bidders will be placed in a Treasury account pending acceptance or rejection of the bid. Other bids submitted under paragraph (a) of this section will be returned to the bidders. If the high bid is subsequently rejected, an amount equal to that deposited with the high bid will be returned according to applicable regulations.

(d) The balance of the winning bonus bid and all rentals and royalties must be paid in accordance with the terms and conditions of this part, the Leasing Notice, and Subchapter A of this chapter.

(e) For each lease issued pursuant to this subpart, there shall be one person identified who shall be solely responsible for all payments due and payable under the provisions of the lease. The single responsible person shall be designated as the payor for the lease and shall be so identified on the Solid Minerals Payor Information Form (MMS–4030) in accordance with § 210.201 of this title. The designated person shall be responsible for all bonus, rental, and royalty payments.

(f) Royalty shall be computed at the rate specified in the leasing notice, and paid in value unless the Secretary elects to have the royalty delivered in kind.

(g) For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the lease year in which production royalty is paid (whether the full amount specified in the lease or ½ the amount specified in the lease pursuant to § 281.28(b) on this part) of OCS minerals produced (sold, transferred, used, or otherwise disposed of) from the leasehold.

(h) Unless stated otherwise in the lease, product valuation will be in accordance with the regulations of this chapter. The value used in the computation of royalty shall be determined by the Director. The value, for royalty purposes, shall be the gross proceeds received by the lessee for produced substances at the point the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry. In establishing the value, the Director shall consider, in this order: (1) The price received by the lessee; (2) commodity and spot market transactions; (3) any other valuation

method proposed by the lessee and approved by the Director; and (4) value or cost netback. For non-arm's length transactions, the first benchmark will only be accepted if it is not less than the second benchmark.

(i) All payors must submit payments and payment information forms and maintain auditable records in accordance with the following Royalty Management regulations of this title:

Section 210.200—Required recordkeeping.
Section 210.201—Solid minerals payor information form.
Section 210.202—Report of sales and royalty remittance—solid minerals.
Section 210.203—Special forms and reports.
Section 212.200—Maintenance of and access to records.
Section 217.250—Audits.
Section 218.40—Assessments for incorrect or late reports and failure to report.
Section 218.50—Timing of payment.
Section 218.51—Method of payment.
Section 218.52—Designated payor.
Section 218.56—Definitions.
Section 218.150—Royalties, net profit shares, and rental payments.
Section 218.151—Rentals.
Section 218.155—Method of payment.
Section 218.202—Late payment or underpayment charges.
Section 241.20—Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

§ 281.27 Annual rental.

(a) The annual lease rental shall be due and payable in accordance with the provisions of this section. No rental shall be due or payable under a lease commencing with the first lease anniversary date following the commencement of royalty payments on leasehold production computed on the basis of the royalty rate specified in the lease except that annual rental shall be due for any year in which production from the leasehold is not subject to royalty pursuant to § 281.28.

(b) Unless otherwise specified in the leasing notice and subsequently issued lease, no annual rental payment shall be due during the first 5 years in the life of a lease.

(c) The leasee shall pay an annual rental in the amount specified in the leasing notice and subsequently issued lease not later than the last day prior to the commencement of the rental year.

(d) A rental adjustment schedule and amount may be specified in a leasing notice and subsequently issued lease when a variance is warranted by geologic, geographic, technical, or economic conditions.

§ 281.28 Royalty.

(a) The royalty due the lessor on OCS minerals produced (i.e., sold, transferred, used, or otherwise disposed of) from a lease shall be set out in a separate schedule attached to and made a part of each lease and shall be as specified in the leasing notice. The royalty due on production shall be based on a percentage of the value or amount of the OCS mineral(s) produced, a sum assessed per unit of product, or other such method as the Secretary may prescribe in the leasing notice. When the royalty specified is a sum assessed per unit of product, the amount of the royalty shall be subject to an annual adjustment based on changes in the appropriate price index, when specified in the leasing notice. When the royalty is specified as a percentage of the value or amount of the OCS minerals produced, the Secretary will notify the lessee when and where royalty is to be delivered in kind.

(b) When prescribed in the leasing notice and subsequently issued lease, royalty due on OCS minerals produced from a leasehold will be reduced for up to any 5 consecutive years, as specified by the lessee prior to the commencement of production, during the 1st through 15th year in the life of the lease. No royalty shall be due in any year of the specified 5-year period that occurs during the 1st through 10th years in the life of the lease, and a royalty of one-half the amount specified in the lease shall be due in any year of the specified 5-year period that occurs in the 11th through 15th year in the life of the lease. The lessee shall pay the amount specified in the lease rental for any royalty free year. The minimum royalty specified in the lease shall apply during any year of reduced royalty.

§ 281.29 Royalty valuation.

The method of valuing the product from a leasehold shall be in accordance with regulations of this chapter and procedures prescribed in the leasing notice and subsequently issued lease.

§ 281.30 Minimum royalty.

Unless otherwise specified in the leasing notice, each lease issued pursuant to the regulations in this part shall require the payment of a specified minimum annual royalty beginning with the year in which OCS minerals are produced (sold, transferred, used, or otherwise disposed of) from the leasehold except that the annual rentals shall apply during any year that royalty free production is in effect pursuant to § 281.28(b). Minimum royalty payments shall be offset by royalty paid on production during the lease year. Minimum royalty payments are due at the beginning of the lease year and payable by the end of the month following the end of the lease year for which they are due.

§ 281.31 Overriding royalties.

(a) Subject to the approval of the Secretary, an overriding royalty interest may be created by an assignment pursuant to section 8(e) of the Act. The Secretary may deny approval of an assignment which creates an overriding royalty on a lease whenever that denial is determined to be in the interest of conservation, necessary to prevent premature abandonment of a producing mine, or to make possible the mining of economically marginal or low-grade ore deposits. In any case, the total of applicable overriding royalties may not exceed 2.5 percent or one-half the base royalty due the Federal Government, whichever is less.

(b) No transfer or agreement may be made which creates an overriding royalty interest unless the owner of that interest files an agreement in writing that such interest is subject to the limitations provided in § 281.30 of this part, paragraph (a) of this section, and § 281.32 of this part.

§ 281.32 Waiver, suspension, or reduction of rental, minimum royalty or production royalty.

(a) The Secretary may waive, suspend, or reduce the rental, minimum royalty, and/or production royalty prescribed in a lease for a specified time period when the Secretary determines that it is in the national interest, it will result in the conservation of natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under existing conditions.

(b) An application for waiver, suspension, or reduction of rental, minimum royalty, or production royalty under paragraph (a) of this section shall be filed in duplicate with the Director. The application shall contain the serial number(s) of the lease(s), the name of the lessee(s) of record, and the operator(s) if applicable. The application shall either:

(1)(i) Show the location and extent of all mining operations and a tabulated statement of the minerals mined and subject to royalty for each of the last 12 months immediately prior to filing the application:

(ii) Contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any lease products, and the amount of all

overriding royalties and payments out of production paid to others than the United States; and

(iii) All facts showing whether or not the mine(s) can be successfully operated under the royalty fixed in the lease; or

(2) If no production has occurred from the lease, show that the lease cannot be successfully operated under the rental, royalty, and other conditions specified in the lease.

(c) The applicant for a waiver, suspension, or reduction under this section shall file documentation that the lessee and the royalty holders agree to a reduction of all other royalties from the lease so that the aggregate of all other royalties does not exceed one-half the amount of the reduced royalties that would be paid to the United States.

§ 281.33 Bonds and bonding requirements.

(a) When the leasing notice specifies that payment of a portion of the bonus bid can be deferred, the lessee shall be required to submit a surety or personal bond to guarantee payment of a deferred portion of the bid. Upon the payment of the full amount of the cash bonus bid, the lessee's bond will be released.

(b) All bonds to guarantee payment of the deferred portion of the high cash bonus bid furnished by a lessee shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(1) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of the Treasury Circular No. 570 and any supplemental or replacement circulars.)

(2) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(c) Prior to the commencement of any activity on a lease(s), the lessee shall submit a surety or personal bond as described in § 282.40 of this title. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

Subpart D—Assignments and Lease Extensions

§ 281.40 Assignment of leases or interests therein.

(a) Subject to the approval of the Secretary, a lease may be assigned, in whole or in part, pursuant to section 8(e) of the Act to anyone qualified to hold a lease.

(b) Any approved assignment shall be deemed to be effective on the first day of the lease month following the date that it is submitted to the Director for approval unless by written request the parties request that the effective date be the first of the month in which the Director approves the assignment.

(c) The assignor shall be liable for all obligations under the lease occurring prior to the effective date of an assignment.

(d) The assignee shall be liable for all obligations under the lease occurring on or after the effective date of an assignment and shall comply with all terms and conditions of the lease and applicable regulations issued under the Act.

§ 281.41 Requirements for filing for transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein including subleases and assignments of record interest shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $50. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $50 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact signing on behalf of the holder of a lease or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 281.20 of this part.

(c) Where an assignment creates separate leases, a bond shall be furnished for each of the resulting leases in the amount prescribed in § 282.40 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease or any interest therein shall be recognized as the lawful successor to such lease or interest if evidence of status as an heir or devisee is furnished in the form of:

(1) A certified copy of an appropriate order or decree of the court having jurisdiction over the distribution of the estate, or

(2) If no court action is necessary, the statement of two disinterested persons having knowledge of the fact or a certified copy of the will.

(e) The heirs or devisee shall file statements that they are the persons named as successors to the estate with evidence of their qualifications to hold such lease or interest therein.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lease.

§ 281.42 Effect of assignment on particular lease.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions of the lease area become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of the assignment and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty, and annual rental provisions of the lease shall apply separately to each segregated portion.

(b) Each lease of an OCS mineral created by the segregation of a lease under paragraph (a) of this section shall continue in full force and effect for the remainder of the primary term of the original lease and so long thereafter as minerals are produced from the portion of the lease created by segregation in accordance with operations approved by the Director or the lessee is otherwise in compliance with provisions of the lease or regulations for earning the continuation of the lease in effect.

§ 281.43 Effect of suspensions on lease term.

(a) If the Director orders the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease shall be extended by a period of time equivalent to the period of the directed suspension.

(b) If the Director orders or approves the suspension of either operations or production, or both, with respect to any lease that is in force beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart E—Termination of Leases

§ 281.46 Relinquishment of leases or parts of leases.

(a) A lease or any part thereof may be surrendered by the record title holder by filing a written relinquishment with the Director. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to:

(1) Make all payments due, including any accrued rentals and royalties; and

(2) Abandon all operations, remove all facilities, and clear the land to be relinquished to the satisfaction of the Director.

(b) Upon relinquishment of a lease, the data and information submitted under the lease will no longer be held confidential and will be available to the public.

§ 281.47 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that:

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force;

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years, or for a lesser period upon request of the lessee; and

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of:

(i) The fair value of the canceled rights as of the date of cancellation, taking into account both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

(iii) The lessee shall not be entitled to compensation where one of the following circumstances exists when a lease is canceled:

(A) A producing lease is forfeited or is canceled pursuant to section (5)(d) of the Act;

(B) A Testing Plan or Mining Plan is disapproved because of the lessee's failure to demonstrate compliance with the requirements of applicable Federal Law; or

(C) The lessee(s) of a nonproducing lease fails to comply with a provision of the Act, the lease, or regulations issued under the Act, and the noncompliance continues for a period of 30 days or more after the mailing of a notice of noncompliance by registered or certified letter to the lessee(s).

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Part III

Department of the Interior

Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Postlease Discovery, Delineation, Development and Production; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Postlease Discovery, Delineation, Development and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes a separate set of general regulations designed to govern postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulpur in the Outer Continental Shelf (OCS) of the United States. The rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced orderly postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur, while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other users and uses of the oceans. Specific requirements applicable to the specific mineral resources that are offered for lease will be included in the leasing notice and subequently issued leases. The rule is the third and final rule in a series of rules designed to implement a comprehensive prelease prospecting, leasing, and postlease operations regulatory program for OCS minerals other than oil, gas, and sulphur pursuant to the Department of the Interior's (DOI) authority as expressed in the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334).

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and postlease activities associated with prospecting for and discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and similar activities associated with OCS minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the new regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through States local governments, which are directly affected by OCS mineral exploration and mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral exploration and mining activities and other users and uses of OCS resources;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the OCS resources;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for postlease mineral activities and wise management of the natural resources of the OCS.

This rule is designed to govern postlease activities to discover, delineate, develop, produce, and process OCS minerals other than oil, gas, and sulphur.

On April 9, 1986, MMS published an Advance Notice of Proposed Rulemaking (ANPR) for regulations to govern postlease operations (51 FR 12163) associated with OCS mineral leases for minerals other than oil, gas, or sulphur. Comments and recommendations received in response to the ANPR for postlease operations were summarized in the Public Comments and Agency Responses portion of the Notice of Proposed Rulemaking (NPR) that was published on August 18, 1988 (53 FR 31442), to propose rules to govern Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur.

On October 3, 1988, a Notice was published in the **Federal Register** (53 FR 38739) which extended the comment period on the proposed rule from October 3, to November 2, 1988. A total of 23 comments and recommendations were received. Five of those requested that the comment period be extended beyond October 3, 1988. The 18 remaining responses to the August 18, 1988, NPR were comprised of 7 comments and recommendations from State agencies, 1 comment from industry, 4 comments from environmental organizations, 2 comments from individuals, 2 comments from other Federal Agencies, 1 comment from a U.S. Senator, and 1 comment from a group comprised of representatives of State governments, environmental organizations, and industry. A review and discussion of those comments will be found in the section entitled Public Comments and Agency Responses.

The first part of the regulatory regime to govern OCS mineral mining activities was published July 5, 1988 (53 FR 25242), effective August 4, 1988. It established practices and procedures specific to prospecting activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. The provisions of 30 CFR Part 280 are also applicable to G&G exploration and scientific research conducted by a lessee on unleased lands and those conducted on leased OCS lands by a person who is not the operator or lessee. A final rule designed to govern the leasing of such OCS minerals appears in another part of this **Federal Register**.

The DOI's Responsibilities

This rule is an action within the statutory authority of the Secretary of the Interior (Secretary) and is intended to promote and encourage private enterprise in the development of an economically sound and stable domestic materials industry in the United States which provides the appropriate level of protection for the human, marine, and coastal environments.

Section 8(k) of the OCSLA provides specific legal authority and responsibility for the leasing of minerals other than oil, gas, and sulphur in the

OCS. This authority and responsibility exercised in conjunction with 20 other sections of the OCSLA, which are applicable in whole or in part, and other laws provide the Secretary with adequate flexibility and guidelines to establish and administer an OCS minerals leasing and mining program for minerals other than oil, gas, and sulphur.

The DOI and MMS recognize the potential for adverse environmental impacts as a result of OCS mineral development activities. These potential impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Under DOI's case-by-case approach, issues common to all forms of OCS mining activities associated with OCS minerals other than oil, gas, and sulphur will be covered by regulations governing G&G prospecting and scientific research (30 CFR Part 280), leasing (30 CFR Part 281), and postlease operations (30 CFR Part 282).

The lease sale planned for Norton Sound is an example of the way DOI carries out its National Environmental Policy Act (NEPA) responsibilities. On March 11, 1988, MMS published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** (53 FR 8134) in association with a Request for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as the one being prepared for Norton Sound will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are defined. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the targeted OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval of Delineation, Testing, or Mining Plans for the conduct of postlease operations. Based on this approach and information obtained from lessees in support of proposed operations and as a result of MMS's Environmental Studies Program, MMS believes that protection of the environment is compatible with the recovery of minerals other than oil, gas, and sulphur from the OCS.

Background

During the period of 1954 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated under the OCSLA (30 CFR Part 256). These lease offerings resulted in the receipt of high-cash bonus bids totaling more than $54 million. (See Table 1.)

TABLE 1—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	Number of tracts offered	Acres offered	Number of tracts bid on	Total bonus high bid	Number of tracts leased	Number of bids rejected	Number of bids received
Gulf of Mexico salt and sulphur lease offerings:[1]									
1	10/23/54	Sul-LA	108	523,630	5	$1,233,500	5	0	5
8	05/19/60	Sa-LA	10	22,085	1	75,250	1	0	1
13	12/14/65	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	09/05/67	Sa-LA	8	16,995	1	30,564	1	0	1
20	05/13/69	Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S	02/24/88	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183
Pacific phosphate lease offering:[2]									
PH	12/15/61	So-CA	16	80,640	6	122,000	6	0	6

[1] Total Amount of All Bids Received for All Lease Offerings—$82,527,068. Total Amount of All Rentals for All Lease Offerings—$297,860.
[2] Total Amount of All Bids Received—$122,000. [Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.]

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

The MMS is working closely with nine coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with the mining of OCS minerals other than oil, gas, and sulphur. These arrangements include a special working group with Alaska and five task forces involving eight other coastal States: Hawaii; Oregon; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Minerals other than oil, gas, and sulphur which may be discovered and produced from the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS minerals resource data are limited, estimated quantities of mineral associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially exercise leverage over commodity prices.

The OCS mineral deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

This rule establishes a broad regulatory framework; lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease operations will facilitate the consultation and coordination processes authorized under Federal law.

Regulation Organization

This rule governs lessee conducted activities on a lease for minerals other than oil, gas, and sulphur in the OCS. The rule is subdivided into five subparts. A majority of the provisions fall under two subparts: Subpart B, Jurisdiction and Responsibilities of Director; and Subpart C, Obligations and Responsibilities of Lessees. The remaining subparts are Subpart A, General; Subpart D, Payments; and Subpart E, Appeals. While many activities are governed by the provisions of a particular subpart, some activities are subject to provisions contained in more than one subpart. For example, suspensions of production or other operations are addressed in both Subparts B and C, because they can either be directed by MMS or requested by a lessee.

The provisions which govern lessee obligations and responsibilities for activities to be carried out on a lease are contained in Subpart C. Lessee conducted activities normally fall into one or more of three basis categories: exploration, testing, or mining and processing. These lessee conducted activities must be conducted in accordance with an approved plan. No activity may be conducted that is not included in the activities described and approved as part of an approved plan. An exception is made for preliminary activities, i.e., those activities which have no significant environmental impact and which are necessary to prepare a reasonable Delineation, Testing, or Mining Plan. Requirements for the safe conduct of mining activities and environmental protection and monitoring are also in Subpart C. To aid the lessee, reporting and recordkeeping requirements other than those associated with Delineation, Testing, and Mining Plans are given in § 282.29.

Public Comments and Agency Responses

Comments and recommendations received in response to the August 18, 1988, NPR (53 FR 31442) are discussed below in relation to the provisions of the final rule.

Subpart A—General

Section 282.1 Purpose and authority.

Comment: Ten commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining and recommended that DOI request new stand-alone legislation. Various concerns were expressed including: (1) The OCSLA was written for oil and gas and never intended to govern marine mining, (2) the OCSLA does not adequately balance national and State interests and provides for little State involvement both in the decisionmaking process and revenue sharing, (3) the OCSLA gives the Secretary too much discretion in formulating a program to govern OCS mining, and (4) the requirement for a competitive cash bonus bid is a disincentive. The majority of these commenters suggested that DOI desist from further promulgation of rules under the OCSLA and pursue new legislation.

Response: The suggestion to defer promulgation of rules in favor of new stand alone legislation was not adopted. The OCSLA expressly entends DOI's jurisdiction and responsibility to OCS minerals other than oil, gas, and sulphur. The responsible course of action for DOI is to tailor implementing regulations in the best fashion available under the law to meet the requirements of marine mining. The OCSLA provides a clear legal basis for the promulgation of regulations to govern marine mining. Sections 5 and 8(k) of the OCSLA in combination with the 19 other sections of the OCSLA, which are applicable in whole or in part to minerals other than oil, gas, and sulphur, clearly and specifically grant authority to the Secretary to prescribe terms and conditions appropriate to the regulation of marine mining, including prelease prospecting, leasing, and postlease operations. Used in conjunction with other applicable OCSLA provisions and other laws, there is substantial and sufficient authority for ensuring adequate balance of national and State interests. It is true that there is no provision for revenue sharing with adjacent coastal States, but such a provision, with a limited recent exception, is also not available for oil, gas, and sulphur. Proposals for revenue sharing have been opposed by the last several administrations. Recognizing that there are differences btween oil and gas and other minerals, the OCSLA provides the Secretary with the necessary flexibility for the administration of a responsible OCS mining program. There is clear value in the establishment of a separate regulatory regime for OCS minerals other than oil, gas, and sulphur. While lease sales could be held and, in fact, have been held under existing regulations, mining company representatives have expressed a desire for regulations which would permit them to more accurately predict the economics of projected operations. Greater regulatory certainty will facilitate the raising of necessary venture capital

Comment: Seven commenters pointed out that the OCSLA does not grant jurisdiction to DOI over offshore areas which are adjacent to the U.S. territories and possessions.

Response: The DOI recognizes that the OCSLA does not provide jurisdiction over offshore areas adjacent to lands over which the United States exercises jurisdiction and control but which are not States (e.g., Johnston Island). Jurisdiction over those areas is not essential to the establishment of a leasing or regulatory program and is not relevant to the promulgation of this rule.

Section 282.3 Definitions.

Comment: One commenter noted that there were inconsistencies between the definitions of "Adjacent States", "Minerals," and "Person" as proposed in §§ 282.3 and 281.3.

Response: The definitions of two of these terms have been modified in the final rule to address this concern. The definition of "Adjacent State" has been modified by the addition of the word "proposed," between "activity" and "conducted." The definition of "Minerals" was revised to track the language of section 2(q) of the OCSLA. The definition of OCS minerals has been expanded to cite the reservation of source materials essential to production of fissionable materials pursuant to section 12(e) of the Act. The definition of "Person" is unchanged from the definition contained in the proposed rule.

Comment: One commenter recommended that the definition of "development" be reworded by replacing the word "operation" with "construction" and that the word "and" between "facilitates" and "which" be deleted.

Response: The definition of development has been modified in the final rule by the addition of the phrase "construction of offshore facilities" between "drilling," and "and operations" and by deletion of the word "and" from between "facilities" and "which."

Comment: One commenter suggested that the definition for "Governor" be replaced with the statutory definition in both the leasing and operating regulations.

Response: The statutory definition of "Governor" has been adopted for this rule.

Some additional changes were made to the text of § 282.3 to clarify the meaning of certain terms. The last phrase in the definition of "Exploration" was modified to read "proceed with development and production." The word

"person" was substituted for the word "party" in the first line of the definition of "Lessee." The phrase "(when obtained for geochemical analysis)" was inserted in the definition of "Geological sample" between the words "waters" and "acquired." The definition of "Production" was deleted as redundant.

Sections 282.5. 282.6, 282.7, and 282.8 of the proposed rule have been renumbered §§ 282.4, 282.5, 282.6, and 282.7, respectively. This change corrects the inadvertent omission of a § 282.4 in the proposed rule.

Section 282.4 (proposed § 282.5) Opportunities for review and comment.

Comment: Several commenters noted that there is only general mention of joint State/Federal task force involvement in the review and evaluation of postlease activities and the environmental protection measures that will be required of lessees. It was recommended that the final rule describe the composition, responsibilities, and duties of joint State/Federal task forces. The commenters wanted to strengthen the role of task forces in the MMS decisionmaking process and in postlease monitoring of impacts and environmental protection.

Response: The provisions in the final rule relating to task forces and other such joint State/Federal coordination arrangements are purposefully general in order that those arrangements can better serve as a vehicle for the cooperative enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a) and 1345(e)). Provisions in the regulations should not be overly restrictive or prescriptive. They should provide sufficient flexibility to permit structuring of the working arrangements to best suit the specific situation, authority, and jurisdiction involved. The MMS intends to continue to work very closely with adjacent States and other Federal Agencies to determine composition and scope of individual task forces on a case-by-case basis. Representatives, including those from other Federal Agencies, will be invited to participate as their interests and capabilities dictate. The MMS anticipates establishing State/Federal working arrangements early in the process prior to initiation of environmental reviews leading to publication of a lease sale notice. It anticipates that those State/Federal working arrangements will be designed to continue to function through postlease activity. The membership and role of a task force may change as circumstances change and development activities proceed.

While there is no requirement that State/Federal task forces or other working arrangements discharge monitoring or inspection functions for MMS, MMS is open to considering this role on a case-by-case basis. Although it is anticipated that MMS decisions will give great weight to task force recommendations, the rule does not require decisions to "conform" to those recommendations. The MMS does not believe that the Secretary—or the Governor of an adjoining State for that matter—should, or can, relinquish basic authorities and responsibilities vested by law. On the other hand, State/Federal task forces are excellent forums for reaching timely consensus on issues, facilitating communications, and coordinating Federal and State regulatory activities.

Comment: Several commenters requested that Governors be provided at least 90 days to review and to provide comments and recommendations to the Director on proposed Delineation, Testing, and Mining Plans. Some also requested that the Secretary's criteria for balancing various factors be defined. Two commenters asked that the regulations be revised to include specific requirements to provide for public review and comment on proposed activities (e.g., a Notice of Availability of Proposed Delineation, Testing, or Mining Plans should be published in the **Federal Register**).

Response: The timeframes for reviewing, commenting on, and providing recommendations concerning lessee submitted Delineation, Testing, and Mining Plans have not been changed. The specified comment periods track the timeframes mandated by the OCSLA in section 11 for Exploration Plans and sections 19 and 25 for Development and Production Plans. Although Exploration Plans and Development and Production Plans apply to activities associated with OCS oil and gas operations, the review process involved is similar to the review process being established for OCS minerals other than oil, gas, and sulphur. In the event the activities described in a proposed Delineation, Testing, or Mining Plan are of a nature which requires the development of an EIS, the final rule authorizes the Director to allow the Governor additional time for the submission of comments and recommendations.

A set of "defined" criteria has not been included in the final rule. The example of criteria cited by commenters (i.e., criteria established by the Environmental Protection Agency (EPA) under the NEPA and by the National Oceanic and Atmospheric Administration (NOAA) under the Deep Seabed Hard Minerals Resource Act) was reviewed and found to be too narrow in scope to properly reflect the "balancing" which the Secretary is required to perform in arriving at a given decision in a specific case. Any list of criteria which might be appropriate for a given case at a specific time may not be appropriate for use in reaching a balanced decision in that case at another time or in another case at any time. It is sufficient that the Secretary provides an explanation regarding a decision not to adopt a written recommendation submitted by the Governor of an adjacent State. Preparation of environmental assessments for activities governed by plans will also provide public notice and involvement. There will be several opportunities for the interested public to participate in the review of, and comment on, proposed mining activities. Insofar as NEPA analysis is required for proposed activities covered in Delineation, Testing, or Mining Plans, Notices of Intent to prepare EIS's and Notices of Availability of EIS's will be published in the **Federal Register**. The scoping process allows, too, for public involvement. Members of the public may also arrange with the Director (appropriate MMS Regional Director) to be notified of the receipt of lessee submitted proposals and to be provided access to the nonproprietary portions of those proposals. All comments that are received in a timely manner will be taken into consideration during the decisionmaking process.

Comment: A number of commenters recommended that the role of the State/Federal "task forces" should be more specifically defined in the regulations and that the "task forces" should review proposed activity plans, contingency plans, and changes to approved plans.

Response: The recommendation that the role and responsibilities of task forces be specified by regulation has not been adopted. However, to the extent that involved States are interested, it is anticipated that joint State/Federal task forces or other working arrangements will be developed at any point in the process prior to leasing or afterwards. It is also expected that those working arrangements would continue to function as a coordinating mechanism during the review and approval of the postlease plans and activities governed by the regulations in Part 282. There is considerable advantage to allowing flexibility in the nature of those arrangements so that they can be structured to facilitate cooperation and

contribute most effectively to the unique set of conditions, concerns, and needs associated with a given mining operation and its environment.

Section 282.5 (proposed § 282.6) Disclosure of data and information to the public.

Comment: One commenter expressed the view that all information (including proprietary data and information) relied upon to meet the minimum requirements of applications for plan approval should be made available to the public. Another commenter expressed the view that detailed provisions for the protection of proprietary data from disclosure are needed in order not to discourage industry investment.

Response: The availability of G&G data to the public is governed by the Freedom of Information Act, the OCSLA, and implementing regulations including those contained in § 282.5. Section 282.5(b) has been expanded to more explicitly state the persons to whom the Director may make early release of data and information for effective and efficient development of a deposit. Section 282.5(c) continues to permit the Director to make geophysical data and information collected in compliance with a lease stipulation or order concerning the protection of the environment of the lease available to the public, unless the lessee shows to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

Section 282.6 (proposed § 282.7) Disclosure of information to an adjacent State.

Comment: One commenter expressed the view that representatives of adjacent States should be provided access to all lessee submitted plans, data, information and samples.

Response: This rule provides the representatives of adjacent States with the maximum access permitted under the OCSLA. Certain proprietary data and information can be accessed by State officials when the necessary agreements to protect the data and information from unauthorized disclosure have been signed.

Section 282.7 (proposed § 282.8) Jurisdictional controversies.

Comment: One commenter expresssed concern that the provisions of § 282.7 simply reiterate the provisions of section 7 of the OCSLA which governs the handling of jurisdictional controversies and that neither § 281.10 nor § 282.8 anticipates or addresses a situation when the affected OCS mineral resource extends onto adjacent State lands.

Response: The provisions of § 282.7 concerning jurisdiction controversy remain unchanged. While the language of § 282.7 tracks the language of section 7 of the OCSLA, the provisions of that section should not be interpreted as a means for initiating negotiations where jurisdictional controversies are involved, i.e., litigation over the location of the common boundary between Federal OCS lands and State submerged lands is concerned. The situation where an affected OCS mineral resource extends onto adjacent State lands is best addressed by unitization of operations pursuant to § 282.11(d). The fact that an orebody extends under State and Federal OCS lands does not in and of itself constitute a controversy.

To address management of OCS mineral deposits which straddle State/Federal jurisdiction, DOI hopes to be able to develop an agreement with the adjacent State for joint management to the degree joint management is needed for the enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a)) and the protection of correlative rights. The agreement would involve both the State and Federal lessees and assure coordination and cooperation to the extent necessary to maximize efficiency, reduce the regulatory burden, and obtain an equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees typically will negotiate an appropriate agreement to cover mining operations on the leases and the allocation of costs and benefits to the owners of divided interests in the area embraced by the Federal and State leases that are made subject to the unit agreement.

Subpart B—Jurisdiction and Responsibilities of Director

Section 282.10 Jurisdiction and responsibilities of Director.

Comment: One commenter expressed the view that environmental protection measures should be included in the list set forth in § 282.10.

Response: This suggestion has been adopted.

Section 282.11 Director's authority.

Comment: A commenter stated that the Director's authority and responsibility under NEPA and OCSLA are to provide information needed for the assessment and management of environmental impacts on the human, marine, and coastal environments. The commenter felt that the production of this information base must be something on which industry and the States can rely and the result of a process in which they play an effective role.

Response: The marine mining program and regulations provide significant opportunity for adjacent States, industry, and others to work directly with MMS through joint State/Federal task forces and other arrangements. These arrangements play an important role in assuring an adequate information base for decisions. The MMS also generates a wealth of environmental data and information through the environmental studies program. This data and information are applicable in large part to the marine mining program. It provides MMS with some of the best available scientific information on which to base its decisions. The DOI has established the OCS Advisory Board comprised of the OCS Policy Committee, OCS Scientific Committee, and Regional Technical Working Groups as an effective means for industry, States, and others to participate and influence the base of information upon which decisions are made.

Comment: One commenter expressed the view that the applicant of a project should be required under the provisions of these regulations to pay for the environmental analysis of the project.

Response: This suggestion has not been adopted. The lessee is required to submit environmental information regarding impacts of the activities proposed in a Delineation Plan, Testing Plan, or Mining Plan. When additional information is needed, a lessee may be required to provide that information in support of its proposal.

Section 282.11(d)(1) has been modified by adding the phrase "or the prevention of waste" to the end of the first sentence. Prevention of waste is one of the traditional bases for unitizing operations on two or more leases.

Section 282.12 Director's responsibilities.

Comments: Several commenters expressed the view that the criteria on which the Director will disapprove a Testing Plan or Mining Plan should be specified in the rule. The view was that the criteria contained in the proposed rule are too vague and ill defined, and the environmental protection provisions are inadequate. It was felt that the final rule should include a list of very specific criteria to be considered during the review process for approval or disapproval of a Testing Plan or Mining Plan.

Response: Additional specific criteria have not been incorporated in the final rule. The criteria to be used by the

Director in the review and approval/disapproval for a Testing Plan or Mining Plan remain unchanged from those cited in § 282.12 of the proposed rule. The Director's review and assessment of the technical and environmental aspects of a Testing Plan or Mining Plan will take a balanced approach using recognized guidelines for protecting the environment. These guidelines come from a wide variety of laws besides the OCSLA and NEPA. These laws include the Endangered Species Act, Marine Mammals Protection Act, National Historic Preservation Act, and Clean Water Act. Although some sections of the OCSLA are oil and gas specific, other sections are applicable to all minerals in the OCS. These provisions require that activities be conducted in a safe manner and in a manner which is likely to prevent or minimize the likelihood of occurrences which may cause damage to the environment. They permit lease cancellation or suspension of production or other operations if there is a threat of serious, irreparable, or immediate harm to the marine, coastal, or human environments. The absence of specific guidelines in the final rule provides the flexibility needed for the development of environmental protection measures tailored to the technologies, commodities, and OCS locations where the mining operation is to take place.

Comment: One commenter expressed the view that the provisions in the operating regulations, giving the Director discretionary powers to disapprove a Testing Plan or Mining Plan, are poorly defined and not practical.

Response: We do not share this view. The regulations covering the Director's responsibilities and authority regarding review of Testing Plans and Mining Plans are logical, thorough, and practical. Sections on plan review and approval appropriately include consideration of environmental criteria and technical factors during the review of Testing Plans and Mining Plans. They provide ample opportunity for Governors of adjacent States to participate in the process and influence regulatory decisions. When recommendations of the Governor of an adjacent State are not accepted, the Governor is provided a written explanation.

Comment: A number of commenters expressed the view that the timelines specified in § 282.12 preclude full State agency and public participation.

Response: This comment parallels one addressed in the discussion under § 282.4. Joint State/Federal task forces and other arrangements provide substantial opportunity for active participation in the review and assessment process. The timeframes prescribed in the final rule track the timeframes mandated in the OCSLA for similar activities associated with oil and gas leases. Timeframes for comments may be extended when necessary to assure sufficient response time for input by States and the public into the NEPA process. Section 282.12(b)(2) had been modified by the addition of the phrase "or other NEPA document" following "environmental assessment." This modification recognizes that NEPA documentation of the environmental impacts of the activities described in a Delineation Plan may be in a form other than an environmental assessment.

Section 282.13 Suspension of production or other operations.

Comment: A commenter stated that the provisions for the suspension of operations should be revised to require the Director to suspend operations upon request by any State which has participated in joint coordination efforts for reasons stated in § 282.13(b) (1) through (9)

Response: This recommendation has not been adopted. It would be inappropriate for a State to exercise such ultimate authority over Federal lease activity. However, in those cases where a Governor of an adjacent State or appropriate State agency requests a suspension of operations, the Director would review the factors related to the request and suspend operations when circumstances and conditions justify that action. It is anticipated that great weight will be given to requests made by officials of adjacent States.

Comment: Several commenters commented on suspensions. Some expressed the view that the final rule should provide more precise criteria and procedures for the Director to use in making decisions regarding the suspension of production and other operations. Concern was expressed that the rule failed to provide for the compensation of lessees for areas which may be eliminated from development on the basis of information developed during the exploration of the lease. The concern was expressed that there is no provision for compensation for minerals left in place in order to protect sensitive environmental or archaeological value absent cancellation of the lease.

Response: Sufficient criteria are included to assure that a suspension of production and other operations can be directed or approved by the Director whenever such action is necessary. The procedures for compensating lessees for lost access to OCS minerals due to development and production restrictions on a lease are based on the procedures contained in the OCSLA. Since leases issued under the regulations in 30 CFR Part 281 are subject to the OCSLA, the regulations in Part 281 and this Part 282 are subject to compensation limits contained in the OCSLA.

Section 282.13(b)(8) has been modified to read:

"(8) The Director determines that continued operation of a producing mine would result in waste; or" This change is intended to clarify the fact that there must be a producing mine on the lease and the Director must determine that continued operation of the mine would result in waste.

Section 282.13(f)(2) has been modified by changing the period at the end of the proposed provision to a comma and adding the following language: "* * * unless the Director's approval of the lessee's request for suspension authorizes the payment of a lesser amount during the period of approved suspension."

Section 282.15 Cancellation of leases.

Section 282.15(d)(3) has been clarified by the addition of a new paragraph (iii). The new language points up those instances where a lessee will not be entitled to compensaiton when a lease is canceled.

Subpart C—Obligations and Responsibilities of Lessees

Section 282.20 Obligations and responsibilities of lessees.

Comment: One commenter expressed the view that the evaluation of potential environmental impacts of activities proposed by a lessee should include an evaluation of the potential air emissions associated with the activity and the onshore consequences of the expected OCS activities.

Response: Section 282.20 has been modified by revising the ending of the second sentence in § 282.20(a) to read "* * * human environment (including onshore air quality)." This change is consistent with the provisions of the OCSLA. Section 282.22(f) of the proposed and final rule specifies that "a description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution" will be submitted in support of a Delineation Plan. To correct an oversight in the drafting of the proposed rule regarding Testing Plans and Mining Plans, new §§ 282.23(j) and 282.24(o) have been added to the final rule to specify the submission of "a description of measures to be taken to avoid, minimize, or otherwise mitigate air,

land, and water pollution." Sections 282.23(j), (k), (l), (m), and (n) and §§ 282.24(o), (p), (q), and (r) have been renumbered § 282.23 (k), (l), (m), (n), (o) and § 282.24 (p), (q), (r), and (s), respectively. It is anticipated that the Director's review of the air quality consequences of proposed OCS activities will follow the practices and procedures specified in 30 CFR 250.33(b)(19), 250.34(b)(12), 250.45 and 250.46.

Section 282.21 Plans, general.

Comment: One commenter expressed the view that "Preliminary activities" as defined in § 282.21(d) may cause significant adverse impact on OCS resources. One example was based on the view that seismic testing might adversely affect marine mammals and fish with air bladders.

Response: No change has been made in the final rule. As a part of the promulgation of this final rule, MMS conducted an environmental assessment of the preliminary activities that could be conducted before Delineation, Testing, or Mining Plans were developed. The assessment resulted in a finding of no significant impacts for those activities. The lessee is required to provide notice to the Director regarding proposed preliminary activities. When the activities described in a notice go beyond activities which should have no significant adverse impact on the environment, the Director will advise the proponent which activities are not viewed as preliminary activities and the steps to be taken before conducting those activities (e.g., submission of a Delineation Plan together with supporting documents).

Section 282.22 Delineation plan.

Comment: Several commenters stated that the regulations or preamble of the **Federal Register** Notice should make it clear that a consistency determination under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) is applicable to the Director's approval of Delineation, Testing, and Mining Plans. The commenters recommended that the phrase "where applicable" should be deleted from §§ 282.22(m)(4), 282.23(m)(4), and 282.24(q)(4).

Response: This recommendation has not been adopted. The activities described in Delineation, Testing, and Mining Plans are, for the most part, located outside the coastal zone of adjacent States and not subject to a State implementation plan approved under CZMA. In these circumstances, the Director's approval of a Delineation, Testing, or Mining Plan is not subject to CZMA review and consistency concurrence. This position is based upon the memorandum opinion dated October 4, 1988, prepared by the Office of Legal Counsel of the Department of Justice for Abraham D. Sofaer, Legal Adviser, Department of State. The positions expressed in that opinion are consistent with the position previously taken by DOI in this matter.

Comment: One commenter expressed the view that Delineation, Testing, and Mining Plans should be subject to State approval, similar to the approval by the Director as provided in § 282.12.

Response: This recommendation has not been adopted. The rule provides substantial opportunity for State participation in the form of informal coordination of the identification and resolution of issues as well as the usual formal provisions for review and submission of comments and recommendations. In the final analysis, the decisions on the approval or disapproval of these activities are the responsibility of the Secretary of the Interior. Such decisions, by law, are to balance national objectives with State and local concerns.

Comment: One commenter suggested that given the requirements for environmental monitoring, the lessee must be required to submit, as part of the Delineation Plan, a plan for gathering baseline data that characterizes the marine environmental conditions and biological diversity of the lease area prior to any exploration.

Response: No exploration, testing, or mining activities may commence by a lessee before the Director approves the appropriate plan. This approval will be contingent upon a determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. This determination will be based on environmental information prepared in association with the lease offering, as well as the site-specific information developed in conjunction with the preparation of the Delineation, Testing, and Mining Plans. It is not expected that, apart from the above site-specific requirements, each lessee will necessarily be required to develop environmental baseline information. Information gathered as a result of MMS's environmental studies program and information available from other sources can be utilized to ascertain the site-specific environmental conditions prior to the commencement of the environmental monitoring program conducted in association with specific mining activities.

Section 282.28(b) provides adequate authority for the Director to require the lessee to collect additional environmental baseline data when data are needed to support environmental evaluation of activities proposed under a Delineation, Testing, or Mining Plan.

Comment: One commenter expressed the view that the rule should clearly state that waste disposal or discharges will be subject to a National Pollutant Discharge Elimination System (NPDES) permit, an Ocean Dumping permit, or other applicable permit.

Response: It is the lessee's responsibility to be aware of and to obtain all necessary permits and approvals for the conduct of OCS mining activities. This rule does not attempt to address all the requirements imposed upon lessees by laws and regulations administered by other Federal Agencies. Thus, the fact that waste disposal or discharges from leasehold activities may be subject to NPDES permits or other permitting requirements subject to the jurisdiction of a Federal Agency other than MMS has not been included in this rule.

Section 282.23 Testing Plan.

Comment: One commenter expressed the view that the final rule should specifically require the submission of a Testing Plan to determine the environmental effects of mining. Under the proposed rule, the submission of a Testing Plan is at the option of the lessee.

Response: This recommendation was not adopted. When the lessee is able to submit a comprehensive Mining Plan complete with a description of the potential environmental effects of the mining activities and necessary mitigating measures, there is no need to submit a Testing Plan.

Section 282.24 Mining Plan.

Comment: One commenter suggested that a Mining Plan be required to include the description of a stable reference area (also called a preservational reference area). The area would serve as a reference area against which the impact of mining on the lease could be compared. No mining could occur in the reference area.

Response: The MMS will not require a lessee's Mining Plan to designate or describe a stable (preservational) reference area where no mining can occur. However, to properly address environmental concerns, a monitoring plan could include one or more control sites in which no mining would be conducted until late in the life of a lease. Nothing in these rules would preclude a lessee from voluntarily designating a control site on its lease as a stable reference area, available for study by any interested party.

Comment: A commenter stated that site-specific assessments of Delineation, Testing, and Mining Plans cannot address cumulative impacts and that cumulative impacts of mining activities should be made available to the public prior to a lease sale.

Response: The MMS anticipates that an EIS will be prepared prior to the first lease sale in an area. The NEPA documentation conducted prior to a subsequent lease sale will analyze the cumulative impacts of mining activities conducted on previously issued leases together with the anticipated impacts of the mining activities that are expected to occur as a result of the proposed sales of additional OCS mineral leases in the area.

Comment: One commenter said the lessee should be required to mitigate any potential adverse environmental impact and that the Mining Plan should stipulate measures the lessee will be required to implement to accomplish this. Another expressed doubts that mitigation measures exist to reduce significant adverse environmental impacts associated with the mining of construction materials, placers, and phosphorite.

Response: No change has been made in the rule based on this comment. Mining Plans are required to describe mitigation measures to protect the environment. The MMS will carefully balance development and environmental protection objectives in its review of Mining Plans to determine appropriate measures for avoiding and minimizing the potentially adverse environmental effects of marine mining. Decades of commercial mining of marine sand and gravel in Europe and the Far East have demonstrated that the impacts of these activities can be mitigated. The International Council for the Exploration of the Seas has done considerable research with regard to mitigation of potential impact on fishery resources during marine mining activities. Placer mining also has occurred for many years but on a smaller scale, primarily in Indonesia. Geologically, the two types of deposits are similar so there is no reason to assume that significant impacts could not be addressed through mitigation measures. Commercial offshore mining for phosphorite has not yet occurred anywhere in the world, but again, MMS does not assume that significant impacts could not be satisfactorily mitigated. If significant impacts cannot be mitigated in an acceptable manner, there will be no phosphorite mining on the OCS.

Section 282.25 Plan modification.

Comment: One commenter stated that adjacent States should be notified and allowed to cooperate with the Director in the review and approval of new technology, techniques, procedures, equipment, or activities during the conduct of operations.

Response: Section 282.25 Plan modification (formerly Modified Plan) has been revised and now explicitly provides the same opportunity for adjacent State Governors to comment on significant modifications to plans as is provided for during the review of the initial Delineation, Testing, and Mining Plans. The Governors or other appropriate officials of adjacent States also have an opportunity to review and comment on alternative technologies during the review of a proposed plan. The proposed plan must identify alternatives to technologies considered during the preparation of the plan. The comments of State officials on the proposed plan, if applicable, would be considered in the Director's review and approval of new or alternative technologies, techniques, procedures, equipment, or activities. If the Director determines that the proposed new or alternative technology requires plan modification, then approval of the modification would be subject to § 282.25.

Section 282.27 Conduct of operations.

Comment: One commenter expressed the view that the requirement that lessees provide food and lodging for MMS inspectors should be extended to include State inspectors.

Response: Section 282.27(d)(2) makes provision for lessees to furnish food, quarters, and transportation for MMS representatives performing facilities inspections. In situations where State employees, as contract employees of MMS, conduct the inspections, they would be afforded the same lessee provided food and lodging opportunities as any other MMS inspector. There is no provision in the law or these regulations authorizing inspections by persons other than representatives of the Federal Government, in this instance, the Secretary.

Section 282.28 Environmental protection measures.

Comment: One commenter expressed concern that reliance on the NPDES system will fail to evaluate all but lethal impacts. It was asserted that bioaccumulation, sublethal effects, and cumulative effects will not be addressed by reliance on the NPDES permitting system administered by EPA.

Response: The MMS does not mean to suggest that it will rely exclusively on theNPDES permitting system to protect the environment. The MMS will maintain an active awareness of the results of ongoing research, as well as monitoring results and will use those findings to require refinements to an approved monitoring plan necessary to assure protection of the environment.

The MMS intends to cooperate with EPA in the analysis of the environmental aspects of proposed activities involving waste disposal and/or discharge into the waters above the OCS. This approach will avoid duplication of effort and lead to a monitoring plan and, where applicable, an NPDES permit designed to address the concerns expressed by the commenter.

The potential that subtle effects will occur and go undetected by monitoring is fully recognized. One role of research is to identify and describe subtle phenomena. Considerable research is being funded which involves identification of chronic and sublethal effects of impacts. The MMS intends to factor appropriate research findings into the mitigation of impacts as well as the plans for monitoring impacts.

Comment: Several commenters requested that the rule be expanded to include specific details designed to protect the environment and to mitigate impacts that might result from the conduct of mining activities. Those commenters were especially concerned about the citation of procedures to protect sensitive areas discovered after a lease is issued. They desired assurances that such areas would be deleted from the areas subject to continued mining activities. To this end, they requested that the rule provide a list of criteria to be used to determine that a threshold has been reached which requires the initiation of mitigating measures.

Response: These recommendations have not been adopted. The MMS recognizes its responsibility to evaluate the environmental impacts as well as the technical sufficiency of each activity described in a proposed Delineation, Testing, or Mining Plan. The MMS's administration of its responsibilities under the OCSLA must be carried out in accordance with other governing laws such as NEPA, the Endangered Species Act, the Marine Mammals Protection Act, the Clean Air Act, and the Clean Water Act. The approach of balancing national interests and other objectives mandated by the OCSLA together with compliance with governing provisions of the aforementioned laws make it

impractical to include in the rule lists of prescriptive or detailed criteria that will be used by the Director to assure that leasehold activities are conducted in a safe and environmentally responsible manner. The case-by-case approach envisioned by this rule permits comprehensive environmental review of each of the different environmental setting. The range of potential technologies and techniques that may be used in those settings can best be assessed as they relate to specific proposed activities associated with target OCS minerals. This rule provides general guidance for the protection of the environment which will be supplemented by stipulations included in individual leases based upon the environmental impact reviews and evaluations conducted in association with the leasing process. These guidelines will be further supplemented by conditions and mitigation measures defined in connection with the environmental impact reviews and evaluations conducted in association with the approval of Delineation, Testing, and Mining Plans.

Comment: One commenter recommended that the final rule include criteria to be used to determine when an expected impact has been avoided, minimized, or otherwise mitigated.

Response: This recommendation was not adopted. A properly designed and executed monitoring plan will provide the basis for determining the success of mitigation measures. It is not practical, nor necessarily desirable, to establish by rulemaking, specific criteria for evaluating the effectiveness of mitigation measures that will be applied on a site-specific basis, tailored to specific circumstances. A variety of mitigation techniques may be available to achieve similar results, and sufficient flexibility should be retained through plan approval and monitoring requirements to choose the most effective for a given set of circumstances, with regard to the particular setting, species of concern, seasons of the year, etc.

Comments: One commenter recommended that monitoring be conducted at least monthly, to be responsive to seasonal changes, and that the monitoring of impacts be required during exploration, testing, and mining activities. Other commenters recommended that lessees be required, in every instance, to collect environmental baseline data prior to the submission of a Delineation Plan, Testing, plan, or Mining Plan.

Response: These two recommendations were not adopted. Monitoring plans will be designed to consider factors such as seasonal changes and practicular mining phases for the site and commodity being mined. For some commodities this could mean almost continuous monitoring in the early stages; for others, a monthly requirement may be unnecessarily burdensome or costly.

Although the regulations do not require lessees to collect baseline data, per se, prior to plan submissions, they do grant the Director authority to require any environmental data necessary to assure adequate environmental protection (§ 282.11(b)(1)). A lessee's plan(s) must contain information sufficient to permit "comprehensive" environmental evaluations (§ 282.21(a)). Information will likely include baseline data for many areas, such as frontier areas. There are sufficient requirements in the plan obligations of lessees (§ 282.21) and the authority of the Director (§ 282.10) to assure that decisions of the Director are supported by sufficient biological and ecological data to ensure environmentally sound operations. Additionally, in § 282.28(b), the environmental protection measures infer that baseline data, whether provided by the lessees or available elsewhere (e.g., through the Environmental Studies Program (ESP)), will be considered in the Director's decisions. Furthermore, it allows the Director to "require the lessee to collect additional baseline data prior to the approval of the activities proposed."

Section 282.29 Reports and records.

Comment: One commenter recommended that copies of the report associated with revenue sharing and environmental compliance be provided to adjacent States.

Response: There are no provisions in this rule concerning revenue sharing since there are no provisions in the OCSLA for revenue sharing where those revenues are related to minerals other than oil and gas. Section 282.29(c), regarding reports and records, requires within 3 months after completion of operations a report to the Director which will contain environmental information. Section 282.29(d) requires reports on the results of environmental monitoring. These reports will be available on a periodic basis. Interested individuals can contact the appropriate Regional Director for notice of their availability. Specific provisions for disclosure of data and information to the public are included in § 282.5. The provisions governing the disclosure of data and information to an adjacent State are contained in § 282.6 of this rule.

Section 282.29(h) has been modified by revising the phrase "sold, and to whom sold": to read "* * * sold, transferred, used, or otherwise disposed of, and to whom sold or transferred";. This change was made to better define the actions which might represent a "sale" of OCS minerals.

Section 282.31 Suspension of production and other operations.

Comment: One commenter expressed the view that the Governors of adjacent States should receive notice of lessee submitted requests for the suspension of production or other operations.

Response: The final rule does not adopt this view. A lessee's request for suspension of production or other operations may relate to a need for additional time to complete an activity that is necessary to commence or restore production. In those instances where there is an active joint State/Federal working arrangement, State participants would be fully apprised of the situation.

Section 282.40 Bonds.

Section 282.40(e) has been clarified to indicate that the holder of a bond submitted pursuant to § 256.58(a) of this chapter may amend that bond to include the conditions for compliance specified in § 282.40(e).

Section 282.40(g) has been revised to clarify the provisions of the rule governing submission of an operator's bond in substitution for a lessee's bond.

Authors

LeRon E. Bielak, Merlin I. Carter, Walter D. Cruickshank, Barry S. Drucker, William Hauser, Charles R. Ham, John V. Mirabella, Patricia H. Pecora, Sharon E. Rathbun, Gerald D. Rhodes, Jane A. Roberts, Mark H. White, and James W. Workman of the MMS; Ransom Read of the Bureau of Mines; Ronald Smith and Donal F. Ziehl of the Bureau of Land Management; and John Padan of NOAA.

An environmental assessment was prepared to evaluate this rulemaking and the preliminary activities that could occur under these rules. The assessment concluded in a finding of no significant impact for those activities. The DOI has determined that promulgation of this final rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to

be less than $1 million per year. The costs are based on an expected two sales per year with three new leases per sale for a total of six new leases per year. When the program is mature, it is anticipated that there will be 10 preproduction leases and 10 leases in production.

The DOI certifies that the final rule dos not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as the entities that normally engage in OCS mineral related activities are not considered small due to the technical complexity and financial resources needed to successfully conduct OCS mineral related activities.

The information collection requirements contained in 30 CFR Part 282 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0081.

Public reporting burden for this collection of information is estimated to average 13.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 632, 12203 Sunrise Valley Drive; Reston, Virginia 22091 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, MMS, Mines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Date: December 20, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set out in the preamble, a new Part 282 is being added to Subchapter B of Title 30 of the Code of Federal Regulations to read as follows:

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

Subpart A—General

Sec.

Subpart B—Jurisdiction and Responsibilities of Director

Subpart C—Obligations and Responsibilities of Lessees

Subpart D—Payments

Subpart E—Appeals

Authority: Section 204, Pub. L. 95–372, 92 Stat 629, (43 U.S.C. 1334).

Subpart A—General

§ 282.0 Authority for information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0081. The information is being collected to inform the Minerals Management Service (MMS) of general mining operations in the Outer Continental Shalf (OCS). The information will be used to ensure that operations are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The requirement to respond is mandatory.

§ 282.1 Purpose and authority.

(a) The Act authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act (43 U.S.C. 1334). The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with adjacent States and other Departments and Agencies of the Federal Government.

(b) Subject to the supervisory authority of the Secretary, and unless otherwise specified, the regulations in this part shall be administered by the Director of the MMS.

§ 282.2 Scope.

The rules and regulations in this part apply as of their effective date to all operations conducted under a mineral lease for OCS minerals other than oil, gas, or sulphur issued under the provisions of section 8(k) of the Act.

§ 282.3 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipment OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, or mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Contingency Plan" means a plan for action to be taken in emergency situations.

"Data" means geological and geophysical (G&G) facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Development" means those activities which take place following the discovery of minerals in paying quantities including geophysical activities, drilling, construction of offshore facilities, and operation of all onshore support facilities, which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Exploration" means the process of searching for minerals on a lease including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals;

(2) Any drilling including the drilling of a borehole in which the discovery of a mineral other than oil, gas, or sulphur is made and the drilling of any additional boreholes needed to delineate any mineral deposits; and

(3) The taking of sample portions of a mineral deposit to enable the lessee to determine whether to proceed with development and production.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters (when obtained for geochemical analysis) acquired while conducting postlease mining activities.

"Governor" means the Governor of a State or the person or entity designated by, or pursuant to, State law to exercise the power granted to a Governor.

"Information" means G&G data that have been analyzed, processed, or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Acts and which authorizes exploration for, and development and production of, specific minerals; or the area covered by that authorization.

"Lessee" means the person authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA) (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement (EIS) pursuant to section 102(2)(C) of NEPA).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976.

"OCS mineral" means any mineral deposit or accretion found on or below the surface of the seabed but does not include oil, gas, or sulphur; salt or sand and gravel intended for use in association with the development of oil, gas, or sulphur; or source materials essential to production of fissionable materials which are reserved to the United States pursuant to section 12(e) of the Act.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the lease or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

"Testing" means removing bulk samples for processing tests and feasibility studies and/or the testing of mining equipment to obtain information needed to develop a detailed Mining Plan.

§ 282.4 Opportunities for review and comment.

(a) In carrying out MMS's responsibilities under the Act and regulations in this part, the Director shall provide opportunities for Governors of adjacent States, State/Federal task forces, lessees and operators, other Federal Agencies, and other interested parties to review proposed activities described in a Delineation, Testing, or Mining Plan together with an analysis of potential impacts on the environment and to provide comments and recommendations for the disposition of the proposed plan.

(b)(1) For Delineation Plans, the adjacent State Governor(s) shall be notified by the Director within 15 days following the submission of a request for approval of a Delineation Plan. Notification shall include a copy of the proposed Delineation Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Delineation Plan may do so within 30 days of the receipt of the proposed plan and the accompanying information.

(2) In cases where an Environmental Assessment is to be prepared, the Director's invitation to provide comments may allow the adjacent State Governor(s) more than 30 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Delineation Plan and the accompanying environmental information within 15 days following the submission of the request. Agencies that wish to comment on a proposed Delineation Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(c)(1) For Testing Plans, the adjacent State Governor(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Testing Plan. Notification shall include a copy of the proposed Testing Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Testing Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the

adjacent State Governor(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Testing Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Testing Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(d)(1) For Mining Plans, the adjacent State Governor(s) shall be notified by the Director within 20 days following the submission of a request for approval of a proposed Mining Plan. Notification shall include a copy of the proposed Mining Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Mining Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the adjacent State Governor(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Mining Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Mining Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(e) When an adjacent State Governor(s) has provided comments pursuant to paragraphs (b), (c), and (d) of this section, the Governor(s) shall be given, in writing, a list of recommendations which are adopted and the reasons for rejecting any of the recommendations of the Governor(s) or for implementing any alternative means identified during consultations with the Governor(s).

§ 282.5 Disclosure of data and information to the public.

(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations (43 CFR Part 2).

(b) Geophysical data, processed G&G information, interpreted G&G information, and other data and information submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect, unless the Director determines that earlier limited release of such information is necessary for the unitization of operations on two or more leases, to ensure proper Mining Plans for a common orebody, or to promote operational safety. When the Director determines that early limited release of data and information is necessary, the data and information shall be shown only to persons with a direct interest in the affected lease(s), unitization agreement, or joint Mining Plan.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler, and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

§ 282.6 Disclosure of data and information to an adjacent State.

(a) Proprietary data, information, and samples submitted to MMS pursuant to the requirements of this part shall be made available for inspection by representatives of adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that:

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data, information, and samples; and

(c) The data, information, and samples available for inspection by representatives of adjacent State(s) pursuant to an agreement shall be related to leased lands.

§ 282.7 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction, either the Governor of the State or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities and to payment and impounding of rents, royalties, and other sums and with respect to the issuance or nonissuance of new leases pending settlement of the controversy.

Subpart B—Jurisdiction and Responsibilities of Director

§ 282.10 Jurisdiction and responsibilities of Director.

Subject to the authority of the Secretary, the following activities are subject to the regulations in this part and are under the jurisdiction of the Director: Exploration, testing, and mining operations together with the associated environmental protection measures needed to permit those activities to be conducted in an environmentally responsible manner; handling, measurement, and transportation of OCS minerals; and other operations and activities conducted pursuant to a lease issued under Part 281 of this chapter, or pursuant to a right of use and easement granted under this part, by or on behalf of a lessee or the holder of a right of use and easement.

§ 282.11 Director's authority.

(a) In the exercise of jurisdiction under § 282.10, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part; to issue either written or oral orders to govern lease operations; and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practices and are conducted in a manner which is consistent with the following:

(1) Make such OCS minerals available to meet the nation's needs in a timely manner;

(2) Balance OCS mineral resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public a fair and equitable return on OCS minerals leased on the OCS; and

(4) Foster and encourage private enterprise.

(b)(1) The Director is to be provided ready access to all OCS mineral resource data and all environmental data acquired by the lessee or holder of a right of use and easement in the course of operations on a lease or right of use and easement and may require a lessee or holder to obtain additional environmental data when deemed necessary to assure adequate protection of the human, marine, and coastal environments.

(2) The Director is to be provided an opportunity to inspect, cut, and remove representative portions of all samples acquired by a lessee in the course of operations on the lease.

(c) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, on request, the Director may grant a lessee, subject to such conditions as the Director may prescribe, a right of use and easement to construct and maintain platforms, artificial islands, and/or other installations and devices which are permanently or temporarily attached to the seabed and which are needed for the conduct of leasehold exploration, testing, development, production, and processing activities or other leasehold related operations whether on or off the lease.

(d)(1) The Director may approve the consolidation of two or more OCS mineral leases or portions of two or more OCS mineral leases into a single mining unit requested by lessees, or the Director may require such consolidation when the operation of those leases or portions of leases as a single mining unit is in the interest of conservation of the natural resources of the OCS or the prevention of waste. A mining unit may also include all or portions of one or more OCS mineral leases with all or portions of one or more adjacent State leases for minerals in a common orebody. A single unit operator shall be responsible for submission of required Delineation, Testing, and Mining Plans covering OCS mineral operations for an approved mining unit.

(2) Operations such as exploration, testing, and mining activities conducted in accordance with an approved plan on any lease or portion of a lease which is subject to an approved mining unit shall be considered operations on each of the leases that is made subject to the approved mining unit.

(3) Minimum royalty paid pursuant to a Federal lease, which is subject to an approved mining unit, is creditable against the production royalties allocated to that Federal lease during the lease year for which the minimum royalty is paid.

(4) Any OCS minerals produced from State and Federal leases which are subject to an approved mining unit shall be accounted for separately unless a method of allocating production between State and Federal leases has been approved by the Director and the appropriate State official.

§ 282.12 Director's responsibilities.

(a) The Director is responsible for the regulation of activities to assure that all operations conducted under a lease or right of use and easement are conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources. Those activities are to be designed to prevent serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b)(1) In the evaluation of a Delineation Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law; and

(v) Requirements for the protection of the environment, health, and safety.

(2) Within 30 days following the completion of an environmental assessment or other NEPA document prepared pursuant to the regulations implementing NEPA or within 30 days following the comment period provided in § 282.4(b) of this part, the Director shall:

(i) Approve any Delineation Plan which is consistent with the criteria in paragraph (b)(1) of this section;

(ii) Require the lessee to modify any Delineation Plan that is inconsistent with the criteria in paragraph (b)(1) of this section; or

(iii) Disapprove a Delineation Plan when it is determined that an activity proposed in the plan would probably cause serious harm or damage to life (including fish and other aquatic life); to property; to natural resources of the OCS including mineral deposits (in areas leased or not leased); or to the marine, coastal, or human environment, and the proposed activity cannot be modified to avoid the conditions.

(3) The Director shall notify the lessee in writing of the reasons for disapproving a Delineation Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(c)(1) In the evaluation of a Testing Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirement to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.4(c) of this part, the Director shall:

(i) Approve any Testing Plan which is consistent with the criteria in paragraph (c)(1) of this section;

(ii) Require the lessee to modify any Testing Plan which is inconsistent with the criteria in paragraph (c)(1) of this section; or

(iii) Disapprove any Testing Plan when the Director determines the existence of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Testing Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Testing Plan or for requiring modification of a Testing Plan and the conditions that must be met for approval of the plan.

(d)(1) In the evaluation of a Mining Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirements to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.4(d) of this part, the Director shall:

(i) Approve any Mining Plan which is consistent with the criteria in paragraph (d)(1) of this section;

(ii) Require the lessee to modify any Mining Plan which is inconsistent with the criteria in paragraph (d)(1) of this section; or

(iii) Disapprove any Mining Plan when the Director determines the existence of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, and that—

(A) Implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments;

(B) That the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(C) The advantages of disapproving the Mining Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Mining Plan or for requiring modification of a Mining Plan and the conditions that must be met for approval of the plan.

(e) The Director shall assure that a scheduled onsite compliance inspection of each facility which is subject to regulations in this part is conducted at least once a year. The inspection shall be to determine that the lessee is in compliance with the requirements of the law; provisions of the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part. Additional unscheduled onsite inspections shall be conducted without advance notice to the lessee to assure compliance with the provisions of applicable law; the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part.

(f)(1) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification of the lessee's requests, applications, plans, and notices submitted pursuant to the provisions of this part; issue orders to govern lease operations; and require compliance with applicable provisions of the law, the regulations, the lease, and the approved Delineation, Testing, or Mining Plans. The Director may give oral orders or approvals whenever prior approval is required before the commencement of an operation or activity. Oral orders or approvals given in response to a written request shall be confirmed in writing within 3 working days after issuance of the order or granting of the oral approval.

(2) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification, as appropriate, of the design plan, fabrication plan, and installation plan for platforms, artificial islands, and other installations and devices permanently or temporarily attached to the seabed. The approval, disapproval, or requirement to modify such plans may take the form of a condition of granting a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(g) The Director shall establish practices and procedures to govern the collection of all rents, royalties, and other payments due the Federal Government in accordance with terms of the leasing notice, the lease, and the applicable Royalty Management regulations listed in § 281.26(i) of this chapter.

(h) The Director may prescribe or approve, in writing or orally, departures from the operating requirements of the regulations of this part when such departures are necessary to facilitate the proper development of a lease; to conserve natural resources; or to protect life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

§ 282.13 Suspension of production or other operations.

(a) The Director may direct the suspension or temporary prohibition of production or any other operation or activity on all or any part of a lease when it has been determined that such suspension or temporary prohibition is in the national interest to:

(1) Facilitate proper development of a lease including a reasonable time to develop a mine and construct necessary support facilities, or

(2) Allow for the construction or negotiation for use of transportation facilities.

(b) The Director may also direct or, at the request of the lessee, approve a suspension or temporary prohibition of production or any other operation or activity, if:

(1) The lessee failed to comply with a provision of applicable law, regulation, order, or the lease;

(2) There is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment;

(3) The suspension or temporary prohibition is in the interest of national security or defense;

(4) The suspension or temporary prohibition is necessary for the initiation and conduct of an environmental evaluation to define mitigation measures to avoid or minimize adverse environmental impacts.

(5) The suspension or temporary prohibition is necessary to facilitate the installation of equipment necessary for safety of operations and protection of the environment;

(6) The suspension or temporary prohibition is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents, including administrative or judicial challenges or appeals;

(7) The Director determines that continued operations would result in premature abandonment of a producing mine, resulting in the loss of otherwise recoverable OCS minerals;

(8) The Director determines that the lessee cannot successfully operate a producing mine due to market conditions that are either temporary in nature or require temporary shutdown and reinvestment in order for the lessee to adapt to the conditions; or

(9) The suspension or temporary prohibition is necessary to comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.

(c) When the Director orders or approves a suspension or a temporary prohibition of operation or activity including production on all of a lease pursuant to paragraph (a) or (b) of this section, the term of the lease shall be extended for a period of time equal to the period of time that the suspension or temporary prohibition is in effect, except that no lease shall be so extended when the suspension or temporary prohibition is the result of the lessee's gross negligence or willful violation of a provision of the lease or governing regulations.

(d) The Director may, at any time within the period prescribed for a suspension or temporary prohibition issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a Delineation, Testing, or Mining Plan for approval in accordance with the requirements for the approval of such plans in this part.

(e)(1) When the Director orders or issues a suspension or a temporary prohibition pursuant to paragraph (b)(2) of this section, the Director may require the lessee to conduct site-specific studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension or temporary prohibition, the potential for damage from the hazard(s), and the measures available for mitigating the hazard(s). The nature, scope, and content of any study shall be subject to approval by the Director. The lessee shall furnish copies and all results of any such study to the Director. The cost of the study shall be borne by the lessee unless the Director arranges for the cost of the study to be borne by a party other than the lessee. The Director shall make results of any such study available to interested parties and to the public as soon as practicable after the completion of the study and submission of the results thereof.

(2) When the Director determines that measures are necessary, on the basis of the results of the studies conducted in accordance with paragraph (e)(1) of this section and other information available to and identified by the Director, the lessee shall be required to take appropriate measures to mitigate, avoid, or minimize the damage or potential damage on which the suspension or temporary prohibition is based. When deemed appropriate by the Director, the lessee shall submit a revised Delineation, Testing, or Mining Plan to incorporate the mitigation measures required by the Director. In choosing between alternative mitigation measures, the Director shall balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage or harm to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(f)(1) If under the provisions of paragraphs (b) (2), (3), and (4) of this section, the Director, with respect to any lease, directs the suspension of production or other operations on the entire leasehold, no payment of rental or minimum royalty shall be due for or during the period of the directed suspension and the time for the lessee specify royalty free period of a period of reduced royalty pursuant to § 281.28(b) of this subchapter will be extended for the period of directed suspension. If under the provisions of paragraphs (b) (2), (3), and (4) of this section the Director, with respect to a lease on which there has been no production, directs the suspension of operations on the entire leasehold, no payment of rental shall be due during the period of the directed suspension.

(2) If under the provisions of this section, the Director grants the request of a lessee for a suspension of production or other operations, the lessee's obligations to pay rental, minimum royalty, or royalty shall continue to apply during the period of the approved suspension, unless the Director's approval of the lessee's request for suspension authorizes the payment of a lesser amount during the period of approved suspension. If under the provision of this section, the Director grants a lessee's request for a suspension of production or other operations for a lease which includes provisions for a time period which the lessee may specify during which production from the leasehold would be royalty free or subject to a reduced royalty obligation pursuant to § 281.28(b) of this subchapter, the time during which production from a leasehold may be royalty free or subject to a reduced royalty obligation shall not be extended unless the Director's approval of the suspension specifies otherwise.

(3) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

§ 282.14 Noncompliance, remedies, and penalties.

(a)(1) If the Director determines that a lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and the Director determines that such noncompliance poses a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall order the lessee to take immediate and appropriate remedial action to alleviate the threat. Any oral orders shall be followed up by service of a notice of noncompliance upon the lessee by delivery in person to the lessee or agent, or by certified or registered mail addressed to the lessee at the last known address.

(2) If the Director determines that the lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and such noncompliance does not pose a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall serve a notice of noncompliance upon the lessee by delivery in person to the lessee or agent or by certified or registered mail addressed to the lessee at the last known address.

(b) A notice of noncompliance shall specify in what respect(s) the lessee has failed to comply with the provisions of applicable law; regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and shall specify the action(s) which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(c) Failure of a lessee to take the actions specified in the notice of noncompliance within the time limit specified shall be grounds for a suspension of operations and other appropriate actions, including but not limited to the assessment of a civil penalty of up to $10,000 per day for each violation that is not corrected within the time period specified (43 U.S.C. 1350(b)).

(d) Whenever the Director determines that a violation of or failure to comply with any provision of the Act; or any provision of a lease, license, or permit issued pursuant to the Act; or any provision of any regulation promulgated under the Act probably occurred and that such apparent violation continued beyond notice of the violation and the expiration of the reasonable time period allowed for corrective action, the Director shall follow the procedures concerning remedies and penalties in Subpart N, Remedies and Penalties, of Part 250 of this title to determine and assess an appropriate penalty.

(e) The remedies and penalties prescribed in this section shall be

concurrent and cumulative, and the exercise of one shall not preclude the exercise of the other. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation (43 U.S.C. 1350(e)).

§ 282.15 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenue from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

(iii) The lessee shall not be entitled to compensation where one of the following circumstances exists when a lease is canceled:

(A) A producing lease is forfeited or is canceled pursuant to section (5)(d) of the Act;

(B) A Testing Plan or Mining Plan is disapproved because the lessee's failure to demonstrate compliance with the requirements of applicable Federal law; or

(C) The lessee of a nonproducing lease fails to comply with a provision of the Act, the lease, or regulations issued under the Act, and the noncompliance continues for a period of 30 days or more after the mailing of a notice of noncompliance by registered or certified letter to the lessee.

Subpart C—Obligations and Responsibilities of Lessees

§ 282.20 Obligations and responsibilities of lessees.

(a) The lessee shall comply with the provisions of applicable laws; regulations; the lease; the requirements of the approved Delineation, Testing, or Mining Plans; and other written or oral orders or instructions issued by the Director when performing exploration, testing, development, and production activities pursuant to a lease issued under Part 281 of this title. The lessee shall take all necessary precautions to prevent waste and damage to oil, gas, sulphur, and other OCS mineral-bearing formations and shall conduct operations in such manner that does not cause or threaten to cause harm or damage to life (including fish and other aquatic life); to property; to the national security or defense; or to the marine, coastal, or human environment (including onshore air quality). The lessee shall make all mineral resource data and information and all environmental data and information acquired by the lessee in the course of exploration, testing, development, and production operations on the lease available to the Director for examination and copying at the lease site or an onshore location convenient to the Director.

(b) In all cases where there is more than one lease owner of record, one person shall be designated payor for the lease. The payor shall be responsible for making all rental, minimum royalty, and royalty payments.

(c) In all cases where lease operations are not conducted by the sole lessee, a "designation of operator" shall be submitted to and accepted by the Director prior to the commencement of leasehold operations. This designation when accepted will be recognized as authority for the designee to act on behalf of the lessees and to fulfill the lessees' obligations under the Act, the lease, and the regulations of this part. All changes of address and any termination of a designation of operator shall be reported immediately, in writing, to the Director. In the case of a termination of a designation of operator or in the event of a controversy between the lessee and the designated operator, both the lessee and the designated operator will be responsible for the protection of the interests of the lessor.

(d) When required by the Director or at the option of the lessee, the lessee shall submit to the Director the designation of a local representative empowered to receive notices, provide access to OCS mineral and environmental data and information, and comply with orders issued pursuant to the regulations of this part. If there is a change in the designated representative, the Director shall be notified immediately.

(e) Before beginning operations, the lessee shall inform the Director in writing of any designation of a local representative under paragraph (d) of this section and the address of the mine office responsible for the exploration, testing, development, or production activities; the lessee's temporary and

permanent addresses; or the name and address of the designated operator who will be responsible for the operations, and who will act as the local representative of the lessee. The Director shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

(f) The holder of a right of use and easement shall exercise its rights under the right of use and easement in accordance with the regulations of this part.

(g) A lessee shall submit reports and maintain records in accordance with § 282.29 of this part.

(h) When an oral approval is given by MMS in response to an oral request under these regulations, the oral request shall be confirmed in writing by the lessee or holder of a right of use and easement within 72 hours.

(i) The lessee is responsible for obtaining all permits and approvals from MMS or other Agencies needed to carry out exploration, testing, development, and production activities under a lease issued under Part 281 of this title.

§ 282.21 Plans, general.

(a) No exploration, testing, development, or production activities, except preliminary activities, shall be commenced or conducted on any lease except in accordance with a plan submitted by the lessee and approved by the Director. Plans will not be approved before completion of comprehensive technical and environmental evaluations to assure that the activities described will be carried out in a safe and environmentally responsible manner. Prior to the approval of a plan, the Director will assure that the lessee is prepared to take adequate measures to prevent waste; conserve natural resources of the OCS; and protect the environment, human life, and correlative rights. The lessee shall demonstrate to the satisfaction of the Director that the lease is in good standing, the lessee is authorized and capable of conducting the activities described in the plan, and that an acceptable bond has been provided.

(b) Plans shall be submitted to the Director for approval. The lessee shall submit the number of copies prescribed by the Director. Such plans shall describe in detail the activities that are to be conducted and shall demonstrate that the proposed exploration, testing, development, and production activities will be conducted in an operationally safe and environmentally responsible manner that is consistent with the provisions of the lease, applicable laws, and regulations. The Governor of an affected State and other Federal Agencies shall be provided an opportunity to review and provide comments on proposed Delineation, Testing, and Mining Plans and any proposal for a significant modification to an approved plan. Following review, including the technical and environmental evaluations, the Director shall either approve, disapprove, or require the lessee to modify its proposed plan.

(c) Lessees are not required to submit a Delineation or Testing Plan prior to submittal of a proposed Testing or Mining Plan if the lessee has sufficient data and information on which to base a Testing or Mining Plan without carrying out postlease exploration and/or testing activities. A Mining Plan may include proposed exploration or testing activities where those activities are needed to obtain additional data and information on which to base plans for future mining activities. A Testing Plan may include exploration activities when those activities are needed to obtain additional data or information on which to base plans for future testing or mining activities.

(d) Preliminary activities are bathymetric, geological, geophysical, mapping, and other surveys necessary to develop a comprehensive Delineation, Testing, or Mining Plan. Such activities are those which have no significant adverse impact on the natural resources of the OCS. The lessee shall give notice to the Director at least 30 days prior to initiating the proposed preliminary activities on the lease. The notice shall describe in detail those activities that are to be conducted and the time schedule for conducting those activities.

(e) Leasehold activities shall be carried out with due regard to conservation of resources, paying particular attention to the wise management of OCS mineral resources, minimizing waste of the leased resource(s) in mining and processing, and preventing damage to unmined parts of the mineral deposit and other resources of the OCS.

§ 282.22 Delineation Plan.

All exploration activities shall be conducted in accordance with a Delineation Plan submitted by the lessee and approved by the Director. The Delineation Plan shall describe the proposed activities necessary to locate leased OCS minerals, characterize the quantity and quality of the minerals, and generate other information needed for the development of a comprehensive Testing or Mining Plan. A Delineation Plan at a minimum shall include the following:

(a) The OCS mineral(s) or primary interest.

(b) A brief narrative description of the activities to be conducted and how the activities will lead to the discovery and evaluation of a commercially minable deposit on the lease.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) Maps showing the proposed locations of test drill holes, the anticipated depth of penetration of test drill holes, the locations where surficial sample were taken, and the location of proposed geophysical survey lines for each surveying method being employed.

(f) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area; aquifers; other natural resources of the OCS; and hazards to public health, safety, and navigation.

(g) A schedule indicating the starting and completion dates for each proposed exploration activity.

(h) A list of any known archaeological resources on the lease and measures to assure that the proposed exploration activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of measures to be taken to monitor the effects of the proposed exploration activities on the environment in accordance with § 282.28(c) of this part.

(k) A detailed description of practices and procedures to effect the abandonment of exploration activities, e.g., plugging of test drill holes. The proposed procedures shall indicate the steps to be taken to assure that test drill holes and other testing procedures which penetrate the seafloor to a significant depth are properly sealed and that the seafloor is left free of obstructions or structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(l) A detailed description of the cycle of all materials, the method for

discharge and disposal of waste and refuse, and the chemical and physical characteristics of waste and refuse.

(m) A description of the potential environmental impacts of the proposed exploration activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of environmental impacts and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(n) Any other information needed for technical evaluation of the planned activity, such as sample analyses to be conducted at sea, and the evaluation of potential environmental impacts.

§ 282.23 Testing Plan.

All testing activities shall be conducted in accordance with a Testing Plan submitted by the lessee and approved by the Director. Where a lessee needs more information to develop a detailed Mining Plan than is obtainable under an approved Delineation Plan, to prepare feasibility studies, to carry out a pilot program to evaluate processing techniques or technology or mining equipment, or to determine environmental effects by a pilot test mining operation, the lessee shall submit a comprehensive Testing Plan for the Director's approval. Any OCS minerals acquired during activities conducted under an approved Testing Plan will be subject to the payment of royalty pursuant to the governing lease terms. A Testing Plan at a minimum shall include the following:

(a) The nature and purpose of the proposed testing program.

(b) A comprehensive description of the activities to be performed including descriptions of the proposed methods for analysis of samples taken.

(c) A narrative description and maps showing water depths and the locations of the proposed pilot mining or other testing activities.

(d) A comprehensive description of the method and manner in which testing activities will be conducted and the results the lessee expects to obtain as a result of those activities.

(e) The name, registration, and type of equipment to be used, including vessel types together with their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(f) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(g) A schedule specifying the starting and completion dates for each of the testing activities.

(h) A list of known archaeological resources on the lease and measures to be used to assure that the proposed testing activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitat; any unique or special features in the lease area, other natural resources of the OCS; and hazards to public health, safety, and navigation.

(k) A description of the measures to be taken to monitor the impacts of the proposed testing activities in accordance with § 282.28(c) of this part.

(l) A detailed description of the cycle of all materials including samples and wastes, the method for discharge and disposal of waste and refuse, and the chemical and physical characteristics of such waste and refuse.

(m) A detailed description of practices and procedures to effect the abandonment of testing activities, e.g., abandonment of a pilot mining facility. The proposed procedures shall indicate the steps to be taken to assure that mined areas do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(n) A description of potential environmental impacts of testing activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed testing activities and the domestic socioeconomic effects of construction and operation of the proposed testing facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and.

(5) Alternate sites and technologies considered by the lessee and the reasons why they were not selected.

(o) Any other information needed for technical evaluation of the planned activities and for evaluation of the impact of those activities on the human, marine, and coastal environments.

§ 282.24 Mining Plan.

All OCS mineral development and production activities shall be conducted in accordance with a Mining Plan submitted by the lessee and approved by the Director. A Mining Plan shall include comprehensive detailed descriptions, illustrations, and explanations of the proposed OCS mineral development, production, and processing activities and accurately present the lessee's proposed plan of operation. A Mining Plan at a minimum shall include the following:

(a) A narrative description of the mining activities including:

(1) The OCS mineral(s) or material(s) to be recovered;

(2) Estimates of the number of tons and grade(s) of ore to be recovered;

(3) Anticipated annual production;

(4) Volume of ocean bottom expected to be disturbed (area and depth of disruption) each year; and

(5) All activities of the mining cycle from extraction through processing and waste disposal.

(b) Maps of the lease showing water depths, the outline of the mineral deposit(s) to be mined with cross sections showing thickness, and the area(s) anticipated to be mined each year.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) A description of equipment to be used in mining, processing, and transporting of the ore.

(f) A schedule indicating the anticipated starting and completion

dates for each activity described in the plan.

(g) For onshore processing, a description of how OCS minerals are to be processed and how the produced OCS minerals will be weighed, assayed, and royalty determinations made.

(h) For at-sea processing, additional information including type and size of installation or structures and the method of tailings disposal.

(i) A list of known archaeological resources on the lease and the measures to be taken to assure that the proposed mining activities do not damage those resources.

(j) Description of any potential conflicts with other uses and users of the area.

(k) A detailed description of the nature and occurrence of the OCS mineral deposit(s) in the leased area with adequate maps and sections.

(l) A detailed description of development and mining methods to be used, the proposed sequence of mining or development, the expected production rate, the method and location of the proposed processing operation, and the method of measuring production.

(m) A detailed description of the method of transporting the produced OCS minerals from the lease to shore and adequate maps showing the locations of pipelines, conveyors, and other transportation facilities and corridors.

(n) A detailed description of the cycle of all materials including samples and wastes, the method of discharge and disposal of waste and refuse, and the chemical and physical characteristics of the waste and refuse.

(o) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area, aquifers, or other natural resources of the OCS; and hazards to public health, safety, and navigation.

(p) A detailed description of measures to be taken to monitor the impacts of the proposed mining and processing activities on the environment in accordance with § 282.28(c) of this part.

(q) A detailed description of practices and procedures to effect the abandonment of mining and processing activities. The proposed procedures shall indicate the steps to be taken to assure that mined areas on tailing deposits do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that present a hazard to other users or uses of the OCS such as navigation or commercial fishing.

(r) A description of potential environmental impacts of mining activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and the affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed mining activities and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(s) Any other information needed for technical evaluation of the proposed activities and for the evaluation of potential impacts on the environment.

§ 282.25 Plan modification.

Approved Delineation, Testing, and Mining Plans may be modified upon the Director's approval of the changes proposed. When circumstances warrant, the Director may direct the lessee to modify an approved plan to adjust to changed conditions. If the lessee requests the change, the lessee shall submit a detailed, written statement of the proposed modifications, potential, impacts, and the justification for the proposed changes. Revision of an approved plan whether initiated by the lessee or ordered by the Director shall be submitted to the Director for approval. When the Director determines that a proposed revision could result in significant change in the impacts previously identified and evaluated or requires additional permits, the proposed plan revision shall be subject to the applicable review and approval procedures of §§ 282.21, 282.22, 282.23, and 282.24 of this part.

§ 282.26 Contingency Plan.

(a) When required by the Director, a lessee shall include a Contingency Plan as part of its request for approval of a Delineation, Testing, or Mining Plan. The Contingency Plan shall comply with the requirements of § 282.28(e) of this part.

(b) The Director may order or the lessee may request the Director's approval of a modification of the Contingency Plan when such a change is necessary to reflect any new information concerning the nature, magnitude, and significance of potential equipment or procedural failures or the effectiveness of the corrective actions described in the Contingency Plan.

§ 282.27 Conduct of operations.

(a) The lessee shall conduct all exploration, testing, development, and production activities and other operations in a safe and workmanlike manner and shall maintain equipment in a manner which assures the protection of the lease and its improvements, the health and safety of all persons, and the conservation of property, and the environment.

(b) Nothing in this part shall preclude the use of new or alternative technologies, techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other technologies, techniques, procedures, equipment, or activities afford a degree of protection, safety, and performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the written approval of the Director prior to the use of such new or alternative technologies, techniques, procedures, equipment, or activities.

(c) The lessee shall immediately notify the Director when there is a death or serious injury; fire, explosion, or other hazardous event which threatens damage to life, a mineral deposit, or equipment; spills of oil, chemical reagents, or other liquid pollutants which could cause pollution; or damage to aquatic life or the environment associated with operations on the lease. As soon as practical, the lessee shall file a detailed report on the event and action(s) taken to control the situation and to mitigate any further damage.

(d)(1) Lessees shall provide means, at all reasonable hours either day or night, for the Director to inspect or investigate the conditions of the operation and to determine whether applicable regulations; terms and conditions of the lease; and the requirements of the approved Delineation, Testing, or Mining Plan are being met.

(2) A lessee shall, on request by the Director, furnish food, quarters, and transportation for MMS representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for an MMS representative's stay of more than 10

hours. Request for reimbursement must be submitted within 60 days following the cost being incurred.

(e) Mining and processing vessels, platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for structures without helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator;

(2) The area designation based on Official OCS Protraction Diagrams;

(3) The block number in which the facility is located; and

(4) Vessel, platform, structure, or rig name.

(f)(1) Drilling.

(i) When drilling on lands valuable or potentially valuable for oil and gas or geopressured or geothermal resources, drilling equipment shall be equipped with blowout prevention and control devices acceptable to the Director before penetrating more than 500 feet unless a different depth is specified in advance by the Director.

(ii) In cases where the Director determines that there is sufficient liklihood of encountering pressurized hydrocarbons, the Director may require that the lessee comply with all or portions of the requirements in Part 250, Subpart D, of this title.

(iii) Before drilling any hole which may penetrate an aquifer, the lessee shall follow the procedures included in the approved plan for the penetration and isolation of the aquifer during the drilling operation, during use of the hole, and for subsequent abandonment of the hole.

(iv) Cuttings from holes drilled on the lease shall be disposed of and monitored in accordance with the approved plan.

(v) The use of muds in drilling holes on the lease and their subsequent disposition shall be according to the approved plan.

(2) All drill holes which are susceptible to logging shall be logged, and the lessee shall prepare a detailed lithologic log of each drill hole. Drill holes which are drilled deeper than 500 feet shall be drilled in a manner which permits logging. Copies of logs of cores and cuttings and all in-hole surveys such as electronic logs, gamma ray logs, neutron density logs, and sonic logs shall be provided to the Director.

(3) Drill holes for exploration, testing, development, or production shall be properly plugged and abandoned to the satisfaction of the Director in accordance with the approved plan and in such a manner as to protect the surface and not endanger any operation; any freshwater aquifer; or deposit of oil, gas, or other mineral substance.

(g) The use of explosives on the lease shall be in accordance with the approved plan.

(h)(1) Any equipment placed on the seabed shall be designed to allow its recovery and removal upon abandonment of leasehold activities.

(2) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited.

(3) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(i) All loose materials, small tools, and other small objects shall be kept in a suitable storage area or a marked container when not in use or in a marked container before transport over OCS waters;

(ii) All cable, chain, or wire segments shall be recovered after use and securely stored;

(iii) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over OCS waters; and

(iv) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(4) Any equipment or material described in paragraphs (h)(2), (h)(3)(ii), and (h)(3)(iii) of this section that is lost overboard shall be recorded on the daily operations report of the facility and reported to the Director and to the U.S. Coast Guard.

(i) Any bulk sampling or testing that is necessary to be conducted prior to submission of a Mining Plan shall be in accordance with an approved Testing Plan. The sale of any OCS minerals acquired under an approved Testing Plan shall be subject to the payment of the royalty specified in the lease to the United States.

(j) Installations and structures.

(1) The lessee shall design, fabricate, install, use, inspect, and maintain all installations and structures, including platforms on the OCS, to assure the structural integrity of all installations and structures for the safe conduct of exploration, testing, mining, and processing activities considering the specific environmental conditions at the location of the installation or structure.

(2) All fixed or bottom-founded platforms or other structures, e.g., artificial islands shall be designed, fabricated, installed, inspected, and maintained in accordance with the provisions of Part 250, Subpart I, of this title.

(k) The lessee shall not produce any OCS mineral until the method of measurement and the procedures for product valuation have been instituted in accordance with the approved Testing or Mining Plan. The lessee shall enter the weight or quantity and quality of each mineral produced in accordance with § 282.29 of this title.

(l) The lessee shall conduct OCS mineral processing operations in accordance with the approved Testing or Mining Plan and use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical processes, by evaporation, or other means, so that the percentage of concentrates or other mineral substances are recovered in accordance with the practices approved in the Testing or Mining Plan.

(m) No material shall be discharged or disposed of except in accordance with the approved disposal practice and procedures contained in the approved Delineation, Testing, or Mining Plan.

§ 282.28 Environmental protection measures.

(a) Exploration, testing, development, production, and processing activities proposed to be conducted under a lease will only be approved by the Director upon the determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. The Director shall take into account the information contained in the sale-specific environmental evaluation prepared in association with the lease offering as well as the site- and operational-specific environmental evaluations prepared in association with the review and evaluation of the approved Delineation, Testing, or Mining Plan. The Director's review of the air quality consequences of proposed OCS activities will follow the practices and procedures specified in §§ 250.26, 250.33(b)(19), 250.34(b)(12), and 250.45 of this title.

(b) If the baseline data available are judged by the Director to be inadequate to support an environmental evaluation of a proposed Delineation, Testing, or Mining Plan, the Director may require the lessee to collect additional environmental baseline data prior to the approval of the activities proposed.

(c)(1) The lessee shall monitor activities in a manner that develops the data and information necessary to enable the Director to assess the impacts of exploration, testing, mining, and processing activities on the environment on and off the lease; develop and evaluate methods for mitigating adverse environmental effects; validate assessments made in previous environmental evaluations; and ensure compliance with lease and other requirements for the protection of the environment.

(2) Monitoring of environmental effects shall include determination of the spatial and temporal environmental changes induced by the exploration, testing, development, production, and processing activities on the flora and fauna of the sea surface, the water column, and/or the seafloor.

(3) The Director may place observers onboard exploration, testing, mining, and processing vessels; installations; or structures to ensure that the provisions of the lease, the approved plan, and these regulations are followed and to evaluate the effectiveness of the approved monitoring and mitigation practices and procedures in protecting the environment.

(4) The Director may order or the lessee may request a modification of the approved monitoring program prior to the startup of testing activities or commercial-scale recovery, and at other appropriate times as necessary, to reflect accurately the proposed operations or to incorporate the results of recent research or improved monitoring techniques.

(5) When prototype test mining is proposed, the lessee shall include a monitoring strategy for assessing the impacts of the testing activities and for developing a strategy for monitoring commercial-scale recovery and mitigating the impacts of commercial-scale recovery more effectively. At a minimum, the proposed monitoring activities shall address specific concerns expressed in the lease-sale environmental analysis.

(6) When required, the monitoring plan shall specify:

(i) The sampling techniques and procedures to be used to acquire the needed data and information;

(ii) The format to be used in analysis and presentation of the data and information;

(iii) The equipment, techniques, and procedures to be used in carrying out the monitoring program; and

(iv) The name and qualifications of person(s) designated to be responsible for carrying out the environmental monitoring.

(d) Lessees shall develop and conduct their operations in a manner designed to avoid, minimize, or otherwise mitigate environmental impacts and to demonstrate the effectiveness of efforts to that end. Based upon results of the monitoring program, the Director may specify particular procedures for mitigating environmental impacts.

(e) In the event that equipment or procedural failure might result in significant additional damage to the environment, the lessee shall submit a Contingency Plan which specifies the procedures to be followed to institute corrective actions in response to such a failure and to minimize adverse impacts on the environment. Such procedures shall be designed for the site and mining activities described in the approved Delineation, Testing, or Mining Plan.

§ 282.29 Reports and records.

(a) A report of the amount and value of each OCS mineral produced from each lease shall be made by the payor for the lease for each calendar month, beginning with the month in which approved testing, development, or production activities are initiated and shall be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of such report is granted by the Director. The report shall disclose accurately and in detail all operations conducted during each month and present a general summary of the status of leasehold activities. The report shall be submitted each month until the lease is terminated or relinquished unless the Director authorizes omission of the report during an approved suspension of production. The report shall show for each calendar month the location of each mining and processing activity; the number of days operations were conducted; the identity, quantity, quality, and value of each OCS mineral produced, sold, transferred, used or otherwise disposed of; identity, quantity, and quality of an inventory maintained prior to the point of royalty determination; and other information as may be required by the Director.

(b) The lessee shall submit a status report on exploration and/or testing activities under an approved Delineation or Testing Plan to the Director within 30 days of the close of each calendar quarter which shall include:

(1) A summary of activities conducted;

(2) A listing of all geophysical and geochemical data acquired and developed such as acoustic or seismic profiling records;

(3) A map showing location of holes drilled and where bottom samples were taken; and

(4) Identification of samples analyzed.

(c) Each lessee shall submit to the Director a report of exploration and/or testing activities within 3 months after the completion of operations. The final report of exploration and/or testing activities conducted on the lease shall include:

(1) A description of work performed;

(2) Charts, maps, or plats depicting the area and leases in which activities were conducted specifically identifying the lines of geophysical traverses and/or the locations where geological activity was conducted and/or the locations of other exploration and testing activities;

(3) The dates on which the actual operations were performed;

(4) A narrative summary of any mineral occurrences; environmental hazards; and effects of the activities on the environment, aquatic life, archaeological resources, or other uses and users of the area in which the activities were conducted;

(5) Such other descriptions of the activities conducted as may be specified by the Director; and

(6) Records of all samples from core drilling or other tests made on the lease. The records shall be in such form that the location and direction of the samples can be accurately located on a map. The records shall include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analyses of all samples analyzed.

(d) The lessee shall report the results of environmental monitoring activities required in § 282.28 of this part and shall submit such other environmental data as the Director may require to conform with the requirements of these regulations.

(e)(1) All maps shall be appropriately marked with reference to official lease boundaries and elevations marked with reference to sea level. When required by the Director, vertical projections and cross sections shall accompany plan views. The maps shall be kept current and submitted to the Director annually, or more often when required by the Director. The accuracy of maps furnished shall be certified by a professional engineer or land surveyor.

(2) The lessee shall prepare such maps of the leased lands as are necessary to show the geological conditions as determined from G&G surveys, bottom sampling, drill holes, trenching, dredging, or mining. All excavations shall be shown in such manner that the volume of OCS minerals produced

during a royalty period can be accurately ascertained.

(f) Any lessee who acquires rock, mineral, and core samples under a lease shall keep a representative split of each geological sample and a quarter longitudinal segment of each core for 5 years during which time the samples shall be available for inspection at the convenience of the Director who may take cuts of such cores, cuttings, and samples.

(g)(1) The lessee shall keep all original data and information available for inspection or duplication, by the Director at the expense of the lessor, as long as the lease continues in force. Should the lessee choose to dispose of original data and information once the lease has expired, said data and information shall be offered to the lessor free of costs and shall, if accepted, become the property of the lessor.

(2) Navigation tapes showing the location(s) where samples were taken and test drilling conducted shall be retained for as long as the lease continues in force.

(h) Lessees shall maintain records in which will be kept an accurate account of all ore and rock mined; all ore put through a mill; all mineral products produced; all ore and mineral products sold, transferred, used, or otherwise disposed of and to whom sold or transferred, and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received. The percentage of each of the mineral products recovered and the percentages lost shall be shown. The records associated with activities on a lease shall be available to the Director for auditing.

(i) When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the Director.

§ 282.30 Right of use and easement.

(a) A right of use and easement that includes any area subject to a lease issued or maintained under the Act shall be granted only after the lessee has been notified by the requestor and afforded the opportunity to comment on the request. A holder of a right under a right of use and easement shall exercise that right in accordance with the requirements of the regulations in this part. A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee on its lease.

(b) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it is demonstrated to the Director that the right of use and easement is being exercised by the holder of the right and that the right of use and easement continues to serve the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right. Upon termination of a right of use and easement, the holder of the right shall abandon the premises in the same manner that a lessee abandons activities on a lease to the satisfaction of the Director.

§ 282.31 Suspension of production or other operations.

A lessee may submit a request for a suspension of production or other operations. The request shall include justification for granting the requested suspension, a schedule of work leading to the initiation or restoration of production or other operations, and any other information the Director may require.

Subpart D—Payments

§ 282.40 Bonds.

(a) Pursuant to the requirements for a bond in § 281.33 of this title, prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond to cover the lessee's royalty and other obligations under the lease as specified in this section.

(b) All bonds furnished by a lessee or operator shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(c) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of Treasury Circular No. 570 and any supplemental or replacement circulars.)

(d) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(e) A bond in the minimum amount of $50,000 to cover the lessee's obligations under the lease shall be submitted prior to the commencement of any activity on a leasehold. A $50,000 bond shall not be required on a lease if the lessee already maintains or furnishes a $300,000 bond conditioned on compliance with the terms of leases for OCS minerals other than oil, gas, and sulphur held by the lessee on the OCS for the area in which the lease is located. A bond submitted pursuant to § 256.58(a) of this chapter may be amended to include the aforementioned condition for compliance. Prior to approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(f) For the purposes of this section there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the coast of Alaska; and

(4) The area offshore the Atlantic coast.

(g) A separate bond shall be required for each area. An operator's bond may be submitted for a specific lease(s) in the same amount as the lessee's bond(s) applicable to the lease(s) involved.

(h) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(i) After default, the principal shall, within 6 months after notice or within such shorter period as may be fixed by the Director, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principal may, within that time, file separate or substitute bonds for each lease. Failure to meet these requirements may result in a suspension of operations including production on leases covered by such bonds.

(j) The Director shall not consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease covered by the bond have been met.

§ 282.41 Method of royalty calculation.

In the event that the provisions of royalty management regulations do not apply to the specific commodities produced under regulations in this part, the lessee shall comply with procedures specified in the leasing notice.

§ 282.42 Payments.

Rentals, royalties, and other payments due the Federal Government on leases

for OCS minerals shall be paid and reports submitted by the payor for a lease in accordance with § 281.26 of this title.

Subpart E—Appeals

§ 282.50 Appeals.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty.

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Reader Aids

Federal Register

Vol. 54, No. 11

Wednesday, January 18, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

561.....427
563.....155, 427, 826, 1379

13 CFR

121.....1335
133.....102

14 CFR

1.....940, 1926
13.....1335
39.....104, 105, 107, 595–598, 1938–1945, 1675, 1926
61.....1288
63.....1288
65.....1288
71.....264, 1346
73.....260
91.....264, 940, 1926
95.....1676
97.....108, 1347
107.....582
121.....940, 1288, 1926
125.....940, 1926
129.....940, 1926
135.....940, 1288, 1926
1264.....599

Proposed Rules:

21.....1292
25.....1292
39.....622, 623, 830, 1383–1395, 1726, 1944
71.....626, 1727
93.....831

15 CFR

Ch. III.....601
Ch. VII.....601
777.....1349
806.....1351
970.....514
971.....514

Proposed Rules:

960.....1945

16 CFR

Ch. II.....601
13.....1160

Proposed Rules:

13...35, 1181, 1396, 1946, 1948
305.....1182
1700.....1187

17 CFR

30.....806
180.....1682

Proposed Rules:

34.....1128
230.....308, 309
240.....315

18 CFR

154.....602, 809
157.....602, 809
260.....602, 809
284.....602, 809
385.....602, 809
388.....602, 809

19 CFR

10.....970, 971, 972
101.....1684

Proposed Rules:

201.....37

20 CFR

366.....397

Proposed Rules:

203.....318

21 CFR

103.....398
165.....398
182.....228
184.....228
310.....1162
510.....1163
520.....1163, 1164, 1352, 1685
522.....400, 1164
524.....1163
556.....1685
558.....109, 1685, 1927
880.....1602

Proposed Rules:

182.....228
184.....228
357.....2039
801.....1849
866.....550
868.....550
870.....550
872.....550
874.....550
876.....550
878.....550
880.....550
882.....550
884.....550
886.....550
888.....550
890.....550

22 CFR

9b.....1686
94.....1353

23 CFR

625.....276
626.....1353
658.....1928, 1930

Proposed Rules:

625.....1844
655.....1728

24 CFR

203.....110
234.....110
247.....230
840.....736
841.....736
882.....230
888.....230, 1688
3282.....1689

Proposed Rules:

401.....988
576.....756
840.....747
841.....747
888.....988
891.....769

25 CFR

5.....282
177.....111

26 CFR

1.....16, 283
301.....400

Proposed Rules:

1.....39, 627, 1189
301.....39, 428
602.....1189

28 CFR

0.....296, 816
16.....113

29 CFR

1625.....604
1952.....115
2610.....1358
2676.....1359

Proposed Rules:

1915.....352

30 CFR

5.....17
15.....351
75.....888, 1360
202.....1492
203.....1492
206.....1492
210.....1492
212.....1492
256.....2042
281.....2042
282.....2058
756.....116
913.....118
916.....816

Proposed Rules:

202.....354
206.....354, 1398
210.....354
212.....354
250.....1846
761.....989
904.....1398
926.....632
936.....633
943.....831, 832
950.....1399

31 CFR

103.....1165
500.....21
565.....21

Proposed Rules:

203.....40
214.....40

32 CFR

65.....973
146.....298
376.....975
706.....1167
863.....1169

33 CFR

100.....23
110.....604
117.....24, 611, 1173, 1360
155.....125
162.....604
165.....604, 611

Proposed Rules:

165.....832

34 CFR

301.....1642

36 CFR

Proposed Rules:

7.....429

38 CFR

36.....612, 1690

Proposed Rules:

3.....733
17.....1950

39 CFR

20.....1050

40 CFR

52.....612, 1691, 1692, 1694, 1931, 1934
122.....246
123.....246
124.....246
125.....246
130.....246
166.....1122
168.....1122
180.....382
270.....615
271.....1940
403.....246
440.....25
716.....617
799.....618, 818

Proposed Rules:

52.....41, 44, 634, 1953, 1954
60.....890, 1606, 1610
61.....914
122.....832, 1300
123.....1300
130.....1300
148.....1056
180.....384
228.....44
261.....1189
268.....1056
271.....1056
403.....832
435.....634
763.....914

41 CFR

Ch. 101, Subchapter A.....28

Proposed Rules:

201–8.....833
201–13.....833
201–39.....833

42 CFR

Proposed Rules:

405.....1956
424.....1956
462.....1956
466.....1956
473.....1956
476.....1956
489.....1956

43 CFR

3480.....1492

Public Land Orders:

1829 (Revoked by PLO 6702).....976
2022 (Revoked by PLO 6702).....976
2066 (Revoked by PLO 6702).....976
3938 (Partially revoked by PLO 6702).....976
6695.....124
6696.....124
6698.....402
6699.....975

6700.....975
6701.....975
6702.....976
6703.....977
6704.....978
6705.....978
6706.....979

Proposed Rules:
8360.....1194

44 CFR

64.....1361

45 CFR

Proposed Rules:
1610.....46, 1050
1611.....48

46 CFR

1.....125
10.....125
12.....125
15.....125
26.....125
30.....125
31.....125
35.....125
151.....125
157.....125
175.....125
185.....125
186.....125
187.....125
581.....1361

47 CFR

Ch. I.....1174
0.....151, 1177, 1471
1.....402, 1177
2.....1697
21.....1941
64.....151, 1471
73.....152, 153, 1178, 1179, 1699
94.....1941

Proposed Rules:
1.....1195
2.....157
73.....159, 1196, 1731–1733
80.....157
90.....1733, 1967

48 CFR

817.....979
970.....1288

Proposed Rules:
Ch. 9.....1735
510.....1739
511.....1739
538.....1740
539.....1740
552.....1739, 1740

49 CFR

171.....954
175.....954
580.....980, 981, 982

Proposed Rules:
Ch. II.....49
533.....436
661.....49

50 CFR

23.....983
216.....411
600.....1700
601.....1700
604.....1700
605.....1700
611.....299, 2039
642.....153, 306, 1471
644.....821
646.....1720
663.....299, 2039
672.....986
675.....416, 986

Proposed Rules:
17.....441, 554
301.....834
602.....512
611.....32
663.....32

LIST OF PUBLIC LAWS

Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

Last List November 30, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

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